



STATUTORY INSTRUMENT

No. 10 of 2010.

National Information and Communication Technology (Radio Spectrum) Regulation, 2010

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Being a Regulation,

MADE by the Head of State, acting with, and in accordance with, the advice of the National Executive Council under the *National Information and Communications Technology Act, 2009*, deemed to have come into operation on 29 October 2010.

PART I. – PRELIMINARY.

1. INTERPRETATION.

- (1) In this Regulation, unless the contrary intention appears—
- “administrative basis” means the allocation of spectrum and issuing of licences other than on a market basis;
 - “aircraft” includes an airship, a glider and a balloon;
 - “approved apparatus” means apparatus approved under Section 30;
 - “authorised officer” means a person appointed under Section 66 to be an authorised officer and includes an Inspector;
 - “Certificate of Proficiency” means a certificate of proficiency issued under Part III;
 - “consumer price index” means the index by the name of the Consumer Price Index – All Groups which is published on a quarterly basis by the National Statistical Office established under the *Statistical Services Act* (Chapter 386) or such index as may be published from time to time in substitution for that index;
 - “existing radiocommunications licence” means a licence granted or issued under the *Radio Spectrum Act, 1996* (including a Spectrum Usage Agreement and a Radio Dealers Licence issued under that Act);
 - “existing radiocommunications licensee” means the holder of an existing radiocommunications licence;
 - “geographic unit” in relation to a licence, assignment or transfer, means a geographically bounded area within which the signal strength may be above a specified limit;
 - “GMDSS” means the Global Maritime Distress and Safety System;
 - “harmful interference” means any emission, radiation, or induction which—
 - (a) endangers the functioning of a radionavigation service or other safety service; or
 - (b) seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the Act;
 - “Inspector” means a person appointed under Section 283 of the Act to be an inspector;
 - “ITU Convention” means the *Constitution and Convention of the International Telecommunication Union* signed on 22 December 1992 as amended from time to time;

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- “Kina Facility Rate” means the rate of that name published by the Bank of Papua New Guinea or such other rate published by the Bank of Papua New Guinea from time to time in substitution for that rate;
- “market basis” means the allocation of spectrum using any ‘relevant allocation process’ identified in Section 36(1)(b) of the Act;
- “permit” means a permit issued under Section 29;
- “radio dealer” means the holder of a radio dealers licence;
- “radio dealers licence” means a radiocommunications licence authorising regulated conduct under Section 32;
- “Radio Regulations” means the Radio Regulations published by the International Telecommunication Union in pursuance of recommendations of the World Radio Conferences, as amended from time to time, and includes the appendices to those Radio Regulations and any additional Regulations;
- “radio astronomy service” means a service involving the use of radio astronomy;
- “radiocommunications service” means a service intended for the provision of radiocommunications;
- “radiotelegraphy” means radiocommunications in which the transmitted information is intended to be recorded on arrival as a graphic document;
- “regulated conduct” has the meaning defined in Section 180(1) of the Act;
- “revoke” means an action to revoke, cancel, or otherwise cause to have no effect;
- “ship” includes every kind of vessel or floating or submerged craft of any size, not being a ship that is permanently moored;
- “station” means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunications service or a radio astronomy service;
- “use” in connection with a station or apparatus, includes deal in, or let on hire or loan, or repair or adjust.

(2) For the purposes of this Regulation, any apparatus in a lifeboat or raft or other survival device carried on or in an aircraft or ship station shall be deemed to be part of the apparatus or station.

(3) Unless the contrary intention appears, any words or phrases used in this Regulation and not defined in this Regulation but used in the Act have the same meaning or interpretation as given to them in the Act.

(4) In this Regulation a reference to a licence holder in respect of a radiocommunications class licence includes a reference to a person authorised to engage in regulated conduct as a consequence of a radiocommunications class licence.

PART II. – RADIOCOMMUNICATIONS LICENSING.

Division 1. – General.

2. APPLICATION OF PART II.

Except as otherwise provided by the Act or this Regulation, but subject to any other law, this Part applies to and in respect of all regulated conduct in Papua New Guinea, including all such conduct in respect of–

- (a) all stations on ships registered under the *Merchant Shipping Act, 2003* and on aircraft registered under the *Civil Aviation Act, 2000*; and

- (b) all stations on other ships or aircraft operating in Papua New Guinea waters or air space.

3. STANDARD TERMS AND CONDITIONS OF A RADIOCOMMUNICATIONS LICENCE.

(1) A radiocommunications licence issued by NICTA may be subject to such terms and conditions as NICTA thinks fit including –

- (a) that the radiocommunications licensee provide such information as NICTA may reasonably require before operating apparatus authorised by the licence;
- (b) that the radiocommunications licensee comply with all directions from NICTA in relation to the use of spectrum;
- (c) in accordance with the requirements in Divisions II.8 (interference) and II.9 (interference disputes), that the radiocommunications licensee take all necessary steps to ensure that –
 - (i) no harmful interference is caused and to eliminate any such interference;
 - (ii) the operation of any apparatus causing harmful interference ceases until such time as the interference has been eliminated;
- (d) that the radiocommunications licensee ensure that no apparatus used or operated in the licensed spectrum shall exceed the specified output powers, emission parameters or geographic unit approved for the licence without the prior written approval of NICTA;
- (e) that the radiocommunications licensee comply with the Act, all applicable mandatory instruments and all other applicable laws;
- (f) that the radiocommunications licensee comply with the requirements of all relevant international conventions relating to ICT, including the *International Convention for the Safety of Life at Sea* and the *ITU Convention* and the recommendations made under that convention; and
- (g) that any operation of apparatus under the licence by a person other than the radiocommunications licensee comply with any rules made by NICTA under Section 5(4); and
- (h) that the radiocommunications licensee not assign the licence for the purpose of providing security for a loan.

- (2) Deployment of any apparatus by a radiocommunications licensee shall –
 - (a) be compatible with any technical framework and approval criteria established by NICTA; and
 - (b) be notified to NICTA in such manner and form as NICTA may direct.

4. VARIATION OF CONDITIONS OF LICENCES.

(1) NICTA may vary a spectrum licence or an apparatus licence during its term in either of the following ways –

- (a) as agreed in writing between NICTA and the licensee following an application by the licensee; or
- (b) subject to Subsection (3) and the regulatory principles, by NICTA in its sole discretion.

(2) An application made by a licensee under Subsection (1)(a) shall be in writing and shall be submitted to NICTA stating the following matters –

- (a) the details of, and reasons for, the proposed variation; and
- (b) the date the proposed variation is intended to take effect; and
- (c) any other details as NICTA may require.

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- (3) Prior to varying a licence under Subsection (1)(b), NICTA shall –
 - (a) issue a notice in writing to the licensee setting out –
 - (i) the reasons for the proposed variation; and
 - (ii) the details of the variation; and
 - (iii) a period of at least thirty days during which the licensee may make written submissions; and
 - (b) consider any submission made by the licensee pursuant to Subsection (3)(a)(iii); and
 - (c) issue a direction in writing to the licensee setting out the details and effective date of the variation.

5. THIRD PARTY AUTHORISATION.

- (1) Spectrum licensees and apparatus licensees may authorise third parties to operate apparatus under their licences.
- (2) Any authorisation made pursuant to Subsection (1) shall –
 - (a) be revocable by the licensee at will and such revocation shall be final and conclusive; and
 - (b) require that the person authorised comply with the Act;
- (3) The licensee shall notify any persons authorised to operate apparatus of their obligations under the Act.
- (4) NICTA may make rules setting out –
 - (a) the requirements for the operation of apparatus under licences by persons other than licensees; and
 - (b) the way in which licensees may authorise those persons to operate apparatus under licences.

6. FEES.

- (1) The fees payable in respect of a spectrum licence –
 - (a) issued on a market basis, may be structured to include –
 - (i) an annual spectrum fee component to contribute to the maintenance of the spectrum allocated by the spectrum licence; and
 - (ii) a price component set by the relevant allocation process payable annually or in a lump sum; and
 - (b) issued on an administrative basis, shall be –
 - (i) the non-refundable application fee set out in Schedule 4; and
 - (ii) the annual variable spectrum fee calculated in accordance with the formula in Schedule 2.
- (2) For the purposes of Section 36(2)(ii) of the Act, the standard charges that would have been recovered by NICTA in respect of a spectrum licence if NICTA had followed its standard allocation process are as set out in Subsection (1)(b).
- (3) The fees payable in respect of an apparatus licence shall be –
 - (a) the non-refundable application fee set out in Schedule 1; and
 - (b) the annual fixed apparatus fee set out in Schedule 1; and
 - (c) the annual variable spectrum fee calculated in accordance with the formula in Schedule 2.
- (4) The fees payable in respect of a radio dealer's licence shall be as set out in Schedule 1.

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- (5) The fees payable in respect of a permit issued under Section 29 shall be –
- (a) the non-refundable application fee set out in Schedule 1; and
 - (b) the annual fixed apparatus fee set out in Schedule 1, on a pro rata basis to reflect the period of the permit; and
 - (c) the annual variable spectrum fee calculated in accordance with the formula in Schedule 2, on a pro rata basis to reflect the period of the permit;
- (6) The fees payable in respect of –
- (a) an examination or re-examination in whole or in part for a Certificate of Proficiency, shall be as set out in Schedule 3; and
 - (b) all other matters, shall be as set out in Schedule 4.
- (7) In respect of the formula set out in Schedule 2, NICTA shall issue guidelines describing the rationale for, and setting the values of, the Type (T) and Location (L) factors.
- (8) The fees payable under this section shall be paid to NICTA by such means, at such times and in such manner as NICTA may from time to time determine.
- (9) If a person fails to pay any radiocommunications licence fee payable under the Act by the due date, NICTA may –
- (a) in respect of a licence NICTA proposes to issue, withhold the issuing of the licence until such time as the licensee pays the applicable fee; and
 - (b) impose an additional charge for late payment, calculated daily at a rate of 5 percentage points above the Kina Facility Rate per annum on the amount unpaid from the time when the fee became payable until it is paid; and
 - (c) suspend the licence until all outstanding payments are made.
- (10) A fee is not payable in respect of a radiocommunications class licence.
- (11) Subject to Section 35 of the Act, the Minister responsible for treasury matters, acting on advice from NICTA, may by notice in the National Gazette –
- (a) exempt the payment of a fee; or
 - (b) substitute a reduced fee,
- otherwise payable under the Act.
- (12) An exemption or a reduced fee under Subsection (11) –
- (a) may relate to –
 - (i) any type of licence specified in the notice; or
 - (ii) any type of licensee specified in the notice; or
 - (iii) any use to which the licence may be put; or
 - (iv) any combination of the matters referred to in Paragraphs (i), (ii) and (iii); and
 - (b) may further be subject to compliance with any conditions as are specified in the notice; and
 - (c) shall continue in force for such period as is specified in the notice or until the revocation of such notice by a subsequent notice.

7. SUSPENSION OR REVOCATION OF LICENCES.

- (1) NICTA may, by notice in writing, suspend or revoke a spectrum licence or an apparatus licence in any of the following circumstances –
- (a) the licensee has failed to comply with any of the provisions of the Act or a mandatory instrument; or

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- (b) the licensee is in breach of any conditions of its licence; or
 - (c) the licensee has ceased to fulfil the eligibility requirements set forth in Section 170 of the Act; or
 - (d) the licensee –
 - (i) enters into receivership or liquidation; or
 - (ii) takes any action for its voluntary winding-up or dissolution; or
 - (iii) enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by NICTA); or
 - (iv) is the subject of any order that is made by a competent court or tribunal for its compulsory winding-up or dissolution; or
 - (e) where NICTA considers that it would be in the public interest to do so.
- (2) Before suspending or revoking a licence under Subsection (1), NICTA shall –
- (a) notify the licensee in writing of the proposed action specifying its reasons; and
 - (b) give the licensee at least thirty days within which to –
 - (i) rectify the circumstances giving rise to NICTA's right to suspend or revoke the individual licence; and
 - (ii) make submissions to NICTA in relation to the proposed action; and
 - (c) take into account –
 - (i) whether the licensee has rectified the circumstances giving rise to NICTA's right to suspend or revoke the licence; and
 - (ii) any submissions made by the licensee; and
 - (iii) whether the proposed action is appropriate with regard to the objective of the Act and the regulatory principles.
- (3) Subject to Subsection (4), no suspension or revocation of a licence shall take effect until NICTA has –
- (a) complied with the obligations specified in Subsection (2); and
 - (b) notified the licensee of its decision and the date on which the suspension or revocation shall be effective.
- (4) Notwithstanding Subsections (2) and (3), NICTA may immediately –
- (a) suspend or revoke a licence if the licensee requests NICTA in writing to do so; or
 - (b) suspend a licence if the licensee fails to pay any radiocommunications licence fee payable under the Act by the due date; or
 - (c) suspend a licence to the extent required in the case of any emergency involving harmful interference or safety of life or property.
- (5) The period of a radiocommunications licence continues to run during a period of suspension.
- (6) The suspension or revocation of a licence under this section does not affect any obligation of the licensee to do an act, or refrain from doing an act under the Act, where the obligation arose before the suspension or revocation of the licence.
- (7) A suspension of a licence under this section may –
- (a) be for a specified period; or
 - (b) continue until the fulfilment of a specified condition; or
 - (c) continue until further order of NICTA.

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(8) NICTA shall, as soon as practicable, publish its reasons for suspending or revoking the licence.

8. EXHIBITION AND INSPECTION OF LICENCES.

(1) Except where Subsection (3) applies, spectrum licensees and apparatus licensees shall clearly exhibit their licence at all times in the room or place where the apparatus to which the licence relates is situated.

(2) In the case of a radiocommunications licence in the form of a label, the licence must be kept affixed at all times to part of the apparatus the subject of the licence.

(3) Where it is not practical for a licensee to exhibit its licence in accordance with Subsection (1), the licensee shall make its licence available for inspection at all reasonable times on demand by an Inspector.

- (4) A spectrum licensee and apparatus licensee shall not exhibit their licence –
- (a) where the licence is suspended, for the period of any such suspension; or
 - (b) where the licence has been revoked.

9. LOST, ETC., LICENCES, CERTIFICATES AND PERMITS.

Where NICTA is satisfied that a radiocommunications licence, certificate or permit issued under the Act has been lost, destroyed or defaced, it may issue a replacement licence, certificate or permit on payment of the fee as prescribed in Schedule 4.

Division 2. – Spectrum Licences.

10. ISSUING OF SPECTRUM LICENCES.

(1) NICTA may allocate spectrum by issuing a spectrum licence either on a market basis or an administrative basis and shall use the process that, in NICTA's opinion, would allocate spectrum more efficiently.

- (2) In deciding whether to issue or renew a spectrum licence, NICTA shall consider –
- (a) whether the applicant is eligible to hold a spectrum licence under Section 170 of the Act; and
 - (b) the current spectrum plan and frequency band plans; and
 - (c) the applicable licence conditions; and
 - (d) the period of the licence; and
 - (e) the applicant's proposed frequency usage plan; and
 - (f) all such other matters as NICTA considers relevant.

- (3) In deciding whether to issue or renew a spectrum licence to –
- (a) a current or past spectrum licensee; or
 - (b) an existing radiocommunications licensee,

NICTA shall have regard to –

- (c) whether the person used the spectrum allocated to that person efficiently and effectively under a spectrum licence or an existing radiocommunications licence; and
- (d) whether it is likely that the person will use the spectrum proposed to be allocated efficiently and effectively.

11. PREPARATION OF A CONVERSION PLAN.

(1) Where NICTA proposes to allocate spectrum, either on a market basis or on an administrative basis, which will affect any apparatus licence or existing radiocommunications licence it shall prepare a conversion plan.

(2) A conversion plan shall set out the procedures and timetable for issuing new spectrum licences to replace any apparatus licence or existing radiocommunications licence which is affected by the proposed allocation of spectrum.

(3) The conversion plan may require a spectrum licence to be issued for the whole or any part of the spectrum or geographic area to which the conversion plan applies.

12. MARKETING PLAN.

(1) Where NICTA proposes to allocate any spectrum on a market basis, it shall prepare a marketing plan.

(2) The marketing plan prepared under Subsection (1) shall consist of –

- (a) the relevant allocation process NICTA proposes to employ, whether by auction, tender, commercial negotiations or market-based allocation process;
- (b) the methods, procedures and timetable to be followed for issuing a spectrum licence in connection with the spectrum to be allocated;
- (c) details of how the spectrum dealt with under the plan is to be apportioned among the spectrum licences to be issued;
- (d) the percentage of the spectrum and frequency band that is to be reserved for future use or for public or community services;
- (e) the conditions or type of conditions that may be included in a spectrum licence to be issued; and
- (f) any other matter as NICTA may consider necessary.

(3) Before finalising a marketing plan, NICTA must –

- (a) publish on its public register a draft of the plan; and
- (b) engage in public consultation in accordance with Section 229 of the Act.

(4) NICTA shall publish the marketing plan on its public register.

(5) The marketing plan may require a spectrum licence to be issued for the whole or any part of the spectrum or geographic unit to which the marketing plan applies.

13. APPLICANT INFORMATION PACKAGE.

(1) NICTA shall prepare an information package for applicants containing the marketing plan and any conversion plan in connection with any allocation of spectrum using a relevant allocation process.

(2) The information package may also address –

- (a) the eligibility requirements of persons who may apply for the spectrum licence; and
- (b) the detail and advertising of the proposed allocation process; and
- (c) any entry fees for prospective acquirers; and
- (d) the reserve price and deposits required (if any); and
- (e) how NICTA would resolve equal bids or tenders; and
- (f) the methods of payment of spectrum licence and any other fees; and

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- (g) the geographic unit and spectrum band of the spectrum licence which is on offer; and
- (h) requirements to submit a frequency usage plan; and
- (i) the extent to which the transfer or dealing with a spectrum licence will be permitted; and
- (j) the minimum geographic unit and spectrum that may be traded; and
- (k) the extent to which third parties may be authorised to operate apparatus under the spectrum licence; and
- (l) information and details of any actions required by licensees to protect existing spectrum users; and
- (m) any requirements on licensees to contribute towards or fund changes to other licensees' networks or facilities that are reasonably required by NICTA to mitigate interference caused by the operation of any equipment under any licence to be awarded; and
- (n) any other matters NICTA may deem necessary.

14. APPLICATION FOR SPECTRUM LICENCES.

(1) Where NICTA proposes to allocate spectrum on an administrative basis, it may invite and receive applications for a spectrum licence in respect of such spectrum.

- (2) An application under Subsection (1) shall –
 - (a) be in a form approved by NICTA; and
 - (b) contain –
 - (i) the particulars of the applicant; and
 - (ii) the information required under this regulation and any rules; and
 - (iii) any further particulars specified in the form, or required in any particular case by NICTA; and
 - (c) be accompanied by the applicable application fee.
- (3) NICTA may request from the applicant –
 - (a) any information required but not provided under Subsection (1); and
 - (b) such further information which NICTA considers is relevant to its decision whether to issue the licence.

(4) A request for information under Subsection (3) shall specify a time period for the applicant to respond which is appropriate in the circumstances.

15. DURATION AND RENEWAL OF SPECTRUM LICENCE.

(1) A spectrum licence shall remain in force for such period between five and fifteen years as is specified in the licence unless suspended or revoked pursuant to the Act.

- (2) Subject to Subsection (3), upon the expiry of a spectrum licence, NICTA may –
 - (a) reallocate the spectrum to the existing licensee by renewing the spectrum licence on the same or different terms; or
 - (b) allocate the spectrum to another person, in accordance with the Act; or
 - (c) not allocate the spectrum.

(3) An application for the renewal of a spectrum licence shall be made not later than six months before its expiry and shall be accompanied by –

- (a) such information that NICTA may require; and
- (b) the applicable fee as set out in Schedule 2.

16. CONDITIONS OF SPECTRUM LICENCES.

- (1) Subject to Subsection (2), a spectrum licensee may –
 - (a) deploy any apparatus from any site within their designated segment of spectrum; and
 - (b) decide how they will manage the deployment of apparatus within their designated segment of spectrum; and
 - (c) decide the nature of the ICT service which they wish to deliver; and
 - (d) decide the technology they wish to use.
- (2) A spectrum licence issued by NICTA may be subject to the following conditions –
 - (a) that the operation of any apparatus be compatible with the technical framework established by NICTA for the designated segment of spectrum; and
 - (b) that the spectrum licensee be required to use the spectrum allocated by the spectrum licence efficiently and effectively; and
 - (c) that the spectrum licensee coordinate with other spectrum licensees and apparatus licensees within the same geographical area with a view to minimising interference; and
 - (d) that any assignment of the spectrum licence be subject to NICTA's prior written consent; and
 - (e) such other conditions as NICTA thinks fit.

17. TRADING OF SPECTRUM LICENCES.

- (1) For the purposes of this section –
 - (a) "migrated spectrum licence" means a spectrum licence issued under Subsection 304(3) of the Act; and
 - (b) "non-tradeable spectrum licence" means –
 - (i) a spectrum licence issued on an administrative basis; and
 - (ii) a migrated spectrum licence, in respect of which no determination under Subsection (8) has been made; and
 - (c) "spectrum trading rules" means rules made by NICTA under this section governing trades in spectrum licences; and
 - (d) "standard trading unit" means a parcel of spectrum space defined by NICTA in the spectrum trading rules by reference to frequency and/or geographic area; and
 - (e) "trade" in relation to a spectrum licence, means assign or otherwise deal with the whole or part of the licence by the exercise of a tradeable right; and
 - (f) "tradeable right" means a tradeable spectrum access right where trades are effected by the assignment of standard trading units within a designated segment of spectrum; and
 - (g) "tradeable spectrum licence" means a spectrum licence issued on a market basis or a spectrum licence in respect of which a determination under Subsection (8) has been made.
- (2) NICTA shall, within six months of the Succession Date, make the spectrum trading rules setting out the matters referred to in Subsection (9) and without limitation, the spectrum trading rules may also provide for –
 - (a) the minimum contiguous bandwidth that must be held by any licensee after any trade; and
 - (b) the standard trading units that may be traded in terms of geographic area and/or frequency; and
 - (c) the relevant technical framework that NICTA will apply; and
 - (d) such other matters as NICTA considers relevant to the issue of trading of spectrum licences.

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- (3) A tradeable spectrum licence –
 - (a) is a tradeable right; and
 - (b) may be traded by the licensee, subject to the conditions of the spectrum licence and such other conditions as NICTA may impose.
- (4) The conditions referred to in Subsection (3) may –
 - (a) permit the trade of the spectrum licence only in its entirety; or
 - (b) permit the trade only subject to NICTA's consent; or
 - (c) permit the trade for a geographic area in multiples of a stated geographic unit; or
 - (d) permit the trade in multiples of the standard trading unit; or
 - (e) require that any remaining spectrum held by the spectrum licensee occupy at least a minimum contiguous bandwidth.
- (5) A spectrum licensee may not trade a part of his or her licence that is less than a whole standard trading unit or that is not a multiple of whole standard trading units.
- (6) The parties to a proposed trade under this section shall inform NICTA of the information which is required under Section 15 as if the assignee were an applicant for the spectrum licence.
- (7) A non-tradeable spectrum licence is not a tradable right, may not be traded and may be assigned only in accordance with the terms of the licence.
- (8) The holder of a non-tradeable spectrum licence may apply to NICTA for a determination that the licence is a tradeable right and subject to the following, NICTA may determine that the licence is a tradeable right –
 - (a) no application may be made until such time as NICTA has made the spectrum trading rules; and
 - (b) for the purposes of Section 36 of the Act, the right to trade is a valuable State resource; and
 - (c) a fee shall be payable by the licensee for the right to trade as determined in the manner set out in the spectrum trading rules; and
 - (d) NICTA shall include conditions of the spectrum licence that require the licensee to pay the fee as determined for the right to trade.
- (9) The spectrum trading rules shall set out, in connection with an application under Subsection (8) –
 - (a) the procedures for determining the application;
 - (b) the mechanism for determining the fee payable for the right to trade which may include, without limitation, any or all of the following –
 - (i) a process for negotiation between NICTA and the licensee to agree to the market value of the right to trade; or
 - (ii) relevant processes to assess the market value of the right to trade; or
 - (iii) the assessment of the fee payable by reference to a percentage of the consideration for any subsequent trade; and
 - (c) such other matters as NICTA considers relevant.

18. ASSIGNMENT OF EXISTING RADIOCOMMUNICATIONS LICENCES.

Except with the prior written consent of NICTA, an existing radiocommunications licensee shall not transfer its licence or assign, sublet or otherwise dispose of, or admit any other person to participate in, any of the benefits of its existing radiocommunications licence or the powers or authorities granted by its licence.

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Division 3. – Apparatus Licences.

19. ISSUING APPARATUS LICENCES.

Apparatus licences shall be issued by NICTA on an administrative basis only.

20. TYPES OF APPARATUS LICENCES.

(1) NICTA may determine categories of transmitting and receiving apparatus in respect of which apparatus licences may be issued and until NICTA makes a determination under this subsection, the categories of apparatus shall be as specified in Schedule 1.

(2) Apparatus licences shall be issued in such forms as NICTA thinks fit and may be in the form of a document or a label or both, as determined by NICTA.

(3) An apparatus licence shall specify the apparatus or category of apparatus and any relevant premises, ship, aircraft or vehicle to which it relates.

21. APPLICATION FOR APPARATUS LICENCES.

(1) An application for an apparatus licence or a permit shall –

- (a) be in a form approved by NICTA; and
- (b) contain –
 - (i) the particulars of the applicant;
 - (ii) the information required under this regulation and any rules;
 - (iii) any further particulars specified in the form, or required in any particular case by NICTA.

(2) NICTA may request from the applicant –

- (a) any information required but not provided under Subsection (1); and
- (b) such further information which NICTA considers is relevant to its decision whether to issue the licence.

(3) A request for information under Subsection (2) shall specify a time period for the applicant to respond which is appropriate in the circumstances.

22. PROCEDURE FOR PROCESSING APPARATUS LICENCE APPLICATION.

(1) NICTA shall –

- (a) on payment of the applicable fee, process applications for apparatus licences in the order received; and
- (b) endeavour to complete processing the application for an apparatus licence and make a decision to grant or refuse the application within 60 days of receipt of all relevant information.

(2) If an application is incomplete and the applicant fails to provide all information required under Section 21 within the time specified or any extension of time granted by NICTA –

- (a) the application shall be deemed to have been withdrawn; and
- (b) the applicant may make a fresh application.

23. MATTERS TO CONSIDER FOR APPARATUS LICENCE.

Before deciding whether to grant or refuse an application for an apparatus licence, NICTA shall consider –

- (a) whether the applicant is eligible to apply for an apparatus licence under Section 170 of the Act; and

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- (b) whether radiocommunications from apparatus authorised under the apparatus licence would have the potential to cause harmful interference to any apparatus authorised under any radiocommunications licence; and
- (c) whether the spectrum proposed to be used by the apparatus licensee is more appropriately allocated by issuing a spectrum licence (whether on a market basis or an administrative basis); and
- (d) the applicable licence conditions; and
- (e) the period of the licence; and
- (f) any minimum standards of proficiency required for applicants; and
- (g) all such other matters as NICTA considers relevant.

24. ADDITIONAL CONDITIONS OF APPARATUS LICENCES.

(1) An apparatus licence shall indicate the purpose for which the apparatus may be used, and the licensee, without the written consent of NICTA, shall not use the apparatus, or allow it to be used, for any other purpose or in any other service.

- (2) An apparatus licence issued by NICTA may be subject to the following conditions –
- (a) that any apparatus and the operation, location and arrangement of it shall conform to the requirements, specifications, standards, plans and procedures as approved by NICTA; and
 - (b) that the frequency, bandwidth, type of emission and power used in respect of an apparatus assignment shall be as specified by NICTA; and
 - (c) that, except with the written consent of NICTA, the apparatus licensee shall not alter, modify or re-position the apparatus; and
 - (d) that no material change to an approved site or station related to the apparatus shall be made without the prior written approval of NICTA; and
 - (e) that any antenna which crosses above or is liable to fall upon or to be blown on to an overhead telephone, telegraph, power wire or apparatus shall be guarded to the reasonable satisfaction of the owner of the overhead telephone, telegraph, power wire or apparatus; and
 - (f) that NICTA may require from the apparatus licensee any report, analysis or other information regarding any apparatus or the use of the spectrum; and
 - (g) that the apparatus licensee coordinate with other spectrum licensees and apparatus licensees within the same geographical area before deploying any apparatus to minimise any potential interference; and
 - (h) such other conditions as NICTA thinks fit.

25. DURATION AND RENEWAL OF APPARATUS LICENCE.

(1) An apparatus licence shall remain in force for such period up to five years from the date of grant as is specified in the licence unless the apparatus licence is suspended or revoked pursuant to the Act.

(2) Subject to Subsections (3) and (4), an apparatus licence shall be renewed by NICTA for a period of up to five years.

- (3) An application for the renewal of an apparatus licence shall –
- (a) be made not later than sixty days before its expiry; and
 - (b) be accompanied by such information that NICTA may require.

(4) Before deciding whether to grant or refuse an application for renewal of an apparatus licence, NICTA shall consider the matters specified in Section 23(c).

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(5) Notwithstanding Subsection (1), an apparatus license issued under Section 304(3) of the Act remains in force for such period as is determined in accordance with Section 304(4)(a)(ii) of the Act unless suspended or revoked pursuant to the Act.

(6) An application for the renewal of an apparatus licence under Subsection (2) shall be accompanied by the applicable fee as set out in Schedule 2.

Division 4. – Radiocommunications Class Licences.

26. TYPES OF RADIOCOMMUNICATIONS CLASS LICENCE.

In deciding the types of radiocommunications class licence that may be issued under Section 176 of the Act, NICTA shall consider the following matters –

- (a) whether ongoing controls are required to be imposed on the operations of certain apparatus or services; and
- (b) whether specified conditions are required to operate the apparatus or to offer services; and
- (c) the risk of the apparatus having the potential to cause harmful interference; and
- (d) whether the apparatus requires specific frequencies; and
- (e) whether coverage of the relevant service is to be limited territorially; and
- (f) such other matters as NICTA thinks fit.

27. ADDITIONAL CONDITIONS OF CLASS LICENCES.

In addition to those matters set out in Section 3, a radiocommunications class licence may be subject to such terms, conditions and restrictions as NICTA thinks fit.

28. VALIDITY OF CLASS LICENCES.

(1) A radiocommunications class licence shall be valid until varied or revoked in writing by NICTA.

(2) At least 90 days before the variation or revocation of a radiocommunications class licence, NICTA shall cause a statement to be published in at least one national daily newspaper for at least three consecutive days notifying the public of the variation or revocation and the date the variation or revocation is to take effect.

Division 5. – Permits.

29. NICTA MAY ISSUE PERMITS.

(1) Where NICTA is satisfied that spectrum is to be used for a short period only, upon payment of the relevant fee specified in Section 6(5), NICTA may issue a permit in a form approved by it authorising the use of spectrum for a period specified in the permit.

(2) The provisions of this regulation relating to licences apply to and in respect of permits.

Division 6. – Approved Apparatus.

30. STANDARDS FOR AND APPROVAL OF APPARATUS.

(1) NICTA may from time to time fix minimum requirements and performance standards to be met by apparatus.

(2) Any person may submit any apparatus to NICTA, and NICTA may approve the apparatus subject to such conditions and restrictions as it thinks fit.

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- (3) For the purposes of Subsection (2) –
 - (a) the fee payable for examining any apparatus is the amount set out in Schedule 4 and may include an administrative charge of an amount or hourly rate for examining the apparatus as determined by NICTA but not exceeding the rate set out in Schedule 4; and
 - (b) where any apparatus is not approved, the fee for a re-examination (whether after modification or otherwise) is the amount set out in Schedule 4 together with an administrative charge of an amount or hourly rate for re-examining the apparatus as determined by NICTA but not exceeding the rate set out in Schedule 4.

31. APPROVED APPARATUS.

(1) Except in the case of an amateur station, only approved apparatus may be used by a radiocommunications licensee, and the apparatus shall–

- (a) be installed and maintained to the satisfaction of NICTA; and
- (b) not be altered in any way without the consent of NICTA and subject to such conditions as NICTA thinks fit.

(2) All apparatus shall operate within the ranges of tolerances approved by NICTA for the purpose.

Division 7. – Radio Dealers.

32. LICENSING OF RADIO DEALERS

(1) The apparatus prescribed for the purpose of Section 180(1)(b) of the Act is all apparatus used to transmit radiocommunications and in this section may be referred to as “regulated apparatus”.

(2) A radiocommunications licence to be known as a “radio dealers licence” may authorise the licensee (a “radio dealer”) to deal in, or let on hire or loan, or repair or adjust, any regulated apparatus.

(3) A radio dealers licence may be issued in one of the following classes –

- (a) a full radio dealers licence, by which the licensee is authorised to deal in, or let on hire or loan, or repair or adjust any regulated apparatus; or
- (b) a limited radio dealers licence, by which the licensee is authorised to deal in, or let on hire or loan any regulated apparatus.

(4) Unless NICTA determines otherwise, a separate radio dealers licence is required in respect of each place of business of the radio dealer.

(5) Subject to Subsection (6), a radio dealer shall keep at his place of business a record of –

- (a) all sales, hirings, loans and other dealings (including manufacture) of or with apparatus; and
- (b) the date of the dealing; and
- (c) details of the apparatus; and
- (d) the name and address of the other party.

(6) The record under Subsection (5) shall be kept until the end of the calendar year following the date of the dealing.

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Division 8. – Interference.

33. APPARATUS CAUSING INTERFERENCE.

(1) Subject to the terms of their radiocommunications licence, a radiocommunications licensee shall –

- (a) operate apparatus in such a manner as not to cause harmful interference to any apparatus operated under any radiocommunications licence; and
- (b) comply with any direction of NICTA in that regard.

(2) An offence against Subsection (1) is not committed if, in the opinion of an Inspector, the harmful interference is due to –

- (a) a deficiency as regards the design, maintenance or operation in the affected receiving apparatus; or
- (b) unavoidable propagation conditions or unexpected mixing or combination of signals.

34. INTERFERENCE BY RECEIVING APPARATUS.

A person operating receiving apparatus shall ensure that the energy radiated by the apparatus is reduced to the lowest possible value and that it does not cause harmful interference to any other station.

35. WILFULLY CAUSING INTERFERENCE.

A person shall not, by the use of any apparatus or electrical equipment, without lawful and reasonable excuse (proof of which is on the person), knowingly cause interference to radiocommunications.

36. NICTA RIGHT TO INSPECT.

Where an Inspector has reasonable cause to believe that any apparatus or electrical or other equipment or machinery is causing or likely to cause harmful interference to a station, the Inspector may at all reasonable times enter–

- (a) any place on or at which; or
 - (b) any vessel, aircraft or vehicles in or on which,
- the apparatus, equipment or machinery is or is believed to be and inspect or test it.

37. NICTA MAY GIVE DIRECTIONS TO REDUCE INTERFERENCE.

Where any apparatus or electrical or other equipment or machinery is causing harmful interference to a station, and the interference cannot be prevented or suppressed by action at the station concerned at a cost which in the opinion of NICTA is reasonable, then the owner or operator of the apparatus, equipment or machinery shall take, at his own expenses and within such period as is fixed by NICTA, such action to prevent or suppress the interference as NICTA directs or approves.

Division 9. – Interference Disputes.

38. APPOINTMENT OF A CONCILIATOR.

- (1) NICTA may appoint a person to be a Conciliator.
- (2) A Conciliator may be appointed on either a full-time or a part-time basis.
- (3) A Conciliator holds office for such period as is specified in his instrument of appointment.

(4) A Conciliator's appointment may be expressed to have effect either generally or as otherwise specified by his instrument of appointment.

39. CONCILIATOR'S TERMS AND CONDITIONS.

A Conciliator is to be appointed on such terms and conditions, and be paid such remuneration and allowances, by such parties, as are determined by NICTA.

40. REFERRAL OF COMPLAINTS TO CONCILIATORS.

(1) Where a complaint in writing is made to NICTA to the effect that a person has engaged, is engaging or proposes to engage in conduct (including any act and any refusal or omission to act) that has caused, is causing or is likely to cause –

- (a) interference or risk of interference to radiocommunications; or
- (b) any other disruption or disturbance, or risk of disruption or disturbance, to radiocommunications; and
- (c) the interests of the complainant have been, are or are likely to be affected by the disputed conduct,

NICTA may refer the matter to a Conciliator or deal with the matter under Division 6 of this Part.

(2) Where NICTA decides not to refer a complaint to a Conciliator, NICTA shall give to the complainant a written notice informing the complainant of the decision and the reasons for the decision.

(3) In this division a reference to –

- (a) the conduct specified in Subsection (1) is referred to as “disputed conduct”; and
- (b) being engaged in disputed conduct includes a reference to being involved in, or contributing to, that conduct.

41. REFERRAL OF OTHER MATTERS TO CONCILIATORS.

(1) Where it appears to NICTA that, even though a complaint has not been made under Section 40(1) –

- (a) a person has engaged, is engaging or is proposing to engage in disputed conduct; and
- (b) the interests of another person have been, are or are likely to be affected by the disputed conduct,

NICTA may refer the matter to a Conciliator.

(2) A reference in this section to being engaged in disputed conduct includes a reference to being involved in, or contributing to, that conduct.

42. CONSIDERATION OF WHETHER TO REFER A MATTER.

In considering whether to refer a matter to a Conciliator, NICTA shall have regard to –

- (a) whether, in NICTA's opinion –
 - (i) the matter is trivial; or
 - (ii) the person whose interests allegedly have been, are being or are likely to be affected does not wish the matter to be referred to a Conciliator; and
- (b) where the matter arises from a complaint to NICTA whether, in NICTA's opinion–
 - (i) the complaint is frivolous or vexatious or was not made in good faith; or
 - (ii) the interests of the complainant have not been, are not being or are not likely to be affected by the disputed conduct; or

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- (iii) there is some other remedy that is reasonably available to the complainant; or
- (iv) the complainant has not made reasonable efforts to negotiate a resolution of the matter; and
- (c) any other matters it thinks relevant.

43. CONCILIATOR MAY EFFECT SETTLEMENT IN RELATION TO DISPUTED CONDUCT.

Subject to Section 44, a Conciliator to whom a matter is referred under this division shall –

- (a) inquire into the disputed conduct to which the matter relates; and
- (b) try to effect a settlement of the matter; and
- (c) where the Conciliator cannot effect a settlement, as soon as practicable, give to NICTA a written report setting out –
 - (i) the Conciliator's recommendations for resolving the matter; and
 - (ii) the reasons for those recommendations.

44. CONCILIATOR MAY DECIDE NOT TO MAKE INQUIRY.

(1) A Conciliator may decide not to inquire into a disputed conduct, or, where the Conciliator has commenced to inquire into the conduct, decide not to continue the inquiry, where –

- (a) the Conciliator believes that –
 - (i) the matter is trivial; or
 - (ii) the person whose interests allegedly have been, are being, or are likely to be affected does not wish the inquiry to be made or continued as the case may be; or
- (b) the inquiry arises from a complaint to NICTA and the Conciliator believes that –
 - (i) the complaint is frivolous or vexatious or was not made in good faith; or
 - (ii) the interests of the complainant have not been, are not being or are not likely to be affected by the conduct; or
 - (iii) there is some other remedy that is reasonably available to the complainant; or
 - (iv) the complainant has not made reasonable efforts to negotiate a resolution of the matter.

(2) Where a Conciliator decides not to inquire into, or not to continue to inquire into the conduct in respect of which a complaint was made, the Conciliator shall –

- (a) give the complainant written notice of the decision and the reasons for the decision; and
- (b) give to NICTA a written report on the matter that includes the information referred to in Subsection (2)(a).

(3) A report under Subsection (2)(a) shall be given as soon as practicable after it is prepared.

45. COMPULSORY CONFERENCE.

(1) For the purposes of conducting an inquiry into, or trying to effect a settlement of, a matter under Section 43, a Conciliator may direct a person referred to in Subsection (2) to attend, at a time and place specified in the notice, a conference presided over by the Conciliator.

(2) A direction may be given to –

- (a) where the matter arose as a result of a complaint under Subsection 38(1), the complainant; and
- (b) the person whose disputed conduct led to the inquiry; and/or

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- (c) any other person whose presence at the conference the Conciliator thinks is reasonably likely to be conducive to settling the matter.
- (3) A direction shall be given by written notice to the person concerned.
- (4) The person to whom a direction is given under Subsection (3) is entitled to be paid by NICTA any allowances of the expenses of a person's attendance that are determined by NICTA.
- (5) The person to whom notice is given under Subsection (3) who, without reasonable excuse –
 - (a) fails to attend as required by the direction; or
 - (b) fails to attend and report himself from day to day unless excused, or released from further attendance by the Conciliator,is guilty of an offence.

Penalty – A fine not exceeding K10,000.00.

- (6) Evidence of anything said or of the production of any document at a conference under this section is not admissible –
 - (a) in any court; or
 - (b) in proceedings before a person authorised by a law of the State or by the consent of the parties, to hear evidence.

46. PROTECTION FROM CIVIL ACTIONS.

(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because a statement was made in good faith to a Conciliator in connection with an inquiry into a disputed conduct.

(2) A reference in Subsection (1) to making a statement includes a reference to giving a document or information.

47. NICTA MAY ISSUE DIRECTIONS.

- (1) Where NICTA –
 - (a) receives a Conciliator's report in relation to a matter under Section 43(c); and
 - (b) is satisfied that, in order to prevent the disputed conduct to which the matter relates from causing –
 - (i) interference, or risk of interference to radiocommunications; or
 - (ii) any other disruption or disturbance, or risk of disruption or disturbance to radiocommunications,a person to whom this section applies –
 - (iii) must take specified action; or
 - (iv) refrain from taking specified action,NICTA may issue a written direction to the person to take that action within a specified period or to refrain from taking that action, as the case may be.

(2) In issuing a direction under Subsection (1) NICTA shall have regard to the Conciliator's report.

- (3) This section applies to any of the following persons –
 - (a) a person who has engaged, is engaging or proposes to engage in the disputed conduct; and

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- (b) where the matter in question arose as a result of a complaint under Section 40(1), the complainant.

(4) A reference in this section to being engaged in disputed conduct includes a reference to being involved in or contributing to that conduct.

(5) Where NICTA issues a direction to a person, it shall give the person notice of the reasons for that direction.

48. COMPLAINANTS TO BE KEPT INFORMED.

Where –

- (a) NICTA receives a Conciliator's report in relation to a matter under Section 43(c); and
(b) the matter arose as a result of a complaint under Section 40(1),
NICTA shall, by written notice, inform the complainant of –
(c) any direction issued under Section 47 in relation to the matter (other than a direction issued to the complainant); or
(d) any decision not to issue a direction under Section 47 in relation to the matter, together with the reasons for the decision.

49. CONTRAVENTION OF A DIRECTION.

A person, who knowingly or recklessly contravenes a direction issued under Section 47, is guilty of an offence.

Penalty – A fine not exceeding K10,000.00.

50. STATE NOT LIABLE FOR LOSS.

The State and NICTA are not liable for any loss, damage or injury suffered by a person as a result of complying with a direction under Section 47.

51. OFFENCES RELATING TO SETTLEMENT OF DISPUTES.

A person who –

- (a) refuses to employ another person; or
(b) dismisses or threatens to dismiss another person from his employment; or
(c) prejudices or threatens to prejudice another person in his employment; or
(d) intimidates or coerces or imposes any pecuniary or other penalty on another person,
because that other person –
(e) has made or proposes to make a complaint of the kind referred to a Conciliator under Section 40(1); or
(f) has given or proposes to give information or documents to a third person exercising any power or performing any function under this Part; or
(g) has attended or proposes to attend, a conference held under Section 45,
is guilty of an offence.

Penalty – A fine not exceeding K50,000 or imprisonment for a term not exceeding six months or both.

52. REPORT BY NICTA.

NICTA shall include in each annual report prepared for a financial year a report on the operation of this Part during that year.

PART III. – ACCREDITATION.

Division 1. – Certificates of Proficiency and Examinations.

53. CLASSES OF CERTIFICATES OF PROFICIENCY.

(1) Certificates of Proficiency in such forms as approved by NICTA may be granted by NICTA.

(2) The classes of certificates that may be granted are as specified in Schedule 3.

54. AGE REQUIREMENTS.

(1) A Certificate of Proficiency, other than an Amateur Operator's Certificate of Proficiency, shall not be granted to a person who is under the age of 18 years.

(2) An Amateur Operator's Certificate of Proficiency shall not be granted to a person who is under the age of 14 years.

55. QUALIFICATIONS FOR CERTIFICATES.

A Certificate of Proficiency may be granted—

- (a) on the passing of an examination under Section 56; or
- (b) on proof to the satisfaction of NICTA that the applicant is the holder of a qualification granted in some other country that is, in its opinion, at least of a standard equal to that of the certificate applied for; or
- (c) at the discretion of NICTA, without examination.

56. EXAMINATIONS.

(1) NICTA or an authorised officer may from time to time conduct examinations for applicants for Certificates of Proficiency.

(2) Examinations shall be held in such manner and subject to such conditions as NICTA determines.

(3) NICTA may, in its discretion, reveal to a person who has sat for an examination, or to any other person, or generally, the marks obtained in an examination.

(4) A candidate who fails to pass an examination for a certificate of a particular class is not entitled, as a result of the examination to the grant of a certificate of another class.

57. MAINTENANCE OF QUALIFICATIONS.

NICTA may, at any time, require the holder of a Certificate of Proficiency to satisfy it, by examination or otherwise, that he has the necessary knowledge and skill for the certificate.

58. SUSPENSION OR REVISION OF CERTIFICATES.

NICTA may suspend or revoke a Certificate of Proficiency –

- (a) where the holder fails to satisfy NICTA, when required to do so under Section 57, that he has the necessary knowledge and skill for the certificate; or
- (b) where NICTA is of the opinion that it is desirable to do so on account of –
 - (i) the incompetence of the holder; or
 - (ii) the incapacity of the holder, by reason of physical or mental disability or otherwise, to perform the functions in respect of which the certificate was granted; or

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(iii) the holder not being a fit and proper person to hold the certificate.

59. DECLARATION OF SECRECY.

(1) Before a Certificate of Proficiency is issued, the person to whom it is to be issued shall make and subscribe, in the manner and form approved by NICTA, a declaration that he will observe any provisions of any applicable law relating to the secrecy of messages.

(2) A declaration under Subsection (1) shall be forwarded to, and held by, NICTA.

60. SUPPLY OF PERSONAL PARTICULARS.

A successful applicant for a Certificate of Proficiency shall supply for inclusion in his certificate—

- (a) signed photograph approximately 56mm x 56mm; and
- (b) such personal particulars as are required by NICTA.

Division 2. – Qualifications for Certificates.

61. GMDSS CERTIFICATE.

The qualifications for the GMDSS Certificate of Proficiency are –

- (a) detailed practical knowledge of the operation of all GMDSS sub-systems and equipment; and
- (b) ability to send and receive correctly messages by radiotelephone and radiotelegraphy; and
- (c) detailed knowledge of the regulations applying to radiocommunications, knowledge of the documents relating to charges for radiocommunications and knowledge of those provisions of the *International Convention for the Safety of Life at Sea* which relate to radio; and
- (d) sufficient knowledge of one of the working languages of the ITU, in which candidates should be able to express themselves satisfactorily, both orally and in writing.

62. MROCP CERTIFICATE OF PROFICIENCY.

The qualifications for a Maritime Radio Operator Certificate of Proficiency (“MROCP”) are –

- (a) a practical knowledge of the working and adjustment of such type or types of radiotelephone installation as is or are specified by NICTA; and
- (b) ability to send and to receive correctly messages by radiotelephone; and
- (c) a knowledge of the provisions of the Radio Regulations relating to the exchange of radiotelephone communications, to interference and to the Distress, Urgency, Alarm and Safety Signals; and
- (d) a knowledge of the precautions necessary for the safety of the installation referred to in Paragraph (a).

63. AMATEUR OPERATOR’S CERTIFICATE OF PROFICIENCY.

The qualifications for an Amateur Operator’s Certificate of Proficiency are—

- (a) a knowledge of radiotelegraphy and radiotelephony and electrical principles; and
- (b) a knowledge of the provisions of the Radio Regulations relating to the operation of amateur stations.

**PART IV. – PRIVACY OF RADIOCOMMUNICATIONS AND IMPROPER
SIGNALLING.**

64. IMPROPER SIGNALLING.

- (1) A person, by the use of a station or any apparatus, shall not—
(a) impersonate another person, station or apparatus; or
(b) use the call-sign of another station or apparatus,
whether or not that other station is in Papua New Guinea.
- (2) A person shall not knowingly transmit, or make a signal containing, any profane or obscene language.
- (3) A person shall not transmit or cause or allow to be transmitted a false or deceptive distress signal or call.

PART V. – COMPLIANCE AND ENFORCEMENT.

65. EVIDENCE OF LICENCE.

Where the Act or this regulation or any rule requires a person to be satisfied that a person is licensed under the Act, such requirement shall be deemed to be met if the person sights an apparently valid copy of the relevant licence.

66. AUTHORISED OFFICERS.

- (1) NICTA may, by notice in the National Gazette, appoint persons to be authorised officers for the purposes of this regulation.
- (2) NICTA has and may exercise and perform all the powers and functions of an Inspector or authorised officer.

67. FUNCTIONS OF INSPECTORS.

- (1) In addition to his other powers and functions under the Act and this regulation an Inspector may, on production of his identify card, enter and inspect any station, vessel, aircraft, vehicle, premises or place in which any apparatus is installed or is being installed, and any thing in or on it, and may –
(a) test the apparatus; and
(b) examine and take copies of or extracts from any documents, messages or registers relating to the apparatus.
- (2) The owner, licensee or person in charge of the station, vessel, aircraft, vehicle, premises or place shall afford an Inspector all reasonable assistance for a test under Subsection (1).
- (3) Where in the opinion of an Inspector a breach of the Act or this regulation has been committed in respect of the installation or operation of any apparatus, the Inspector may –
(a) order the owner, licensee, operator or person in charge of the apparatus to cease the operation of, or to dismantle to the satisfaction of the Inspector, the apparatus; and
(b) where he thinks it necessary –
(i) take possession of the apparatus; or
(ii) make it incapable of operation.

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(4) A person aggrieved by an order or action of an Inspector under Subsection (3) may appeal to NICTA, whose decision is final

(5) Subject to Subsection (4), an order under Subsection (3) remains in force until countermanded by NICTA.

(6) Except where an Inspector is investigating possible harmful interference, an Inspector is not entitled to exercise any powers under this section unless –

- (a) the Inspector has produced a written notice signed by a Member authorising the Inspector to undertake the search and stating the grounds for that search; and
- (b) where the premises is a residence, the Inspector has obtained the consent of the occupier to enter the premises.

PART VI. – ADDITIONAL OFFENCES.

68. OBSTRUCTIONS.

A person shall not hinder or obstruct any person in the exercise of his powers or the performance of his functions under this regulation.

Penalty – A fine not exceeding K10,000.00.

69. FALSE STATEMENTS.

A person, who makes any false statement for any purpose of this regulation, is guilty of an offence.

Penalty – A fine not exceeding K10,000.00.

70. IMPORTING UNAPPROVED APPARATUS.

A person who except as provided for by this regulation, or with the consent of NICTA, imports or uses any apparatus other than approved apparatus is guilty of an offence.

Penalty – A fine not exceeding K10,000.00.

71. FAILURE TO COMPLY WITH DIRECTIONS.

A person, who fails to comply with any order, requirement or direction given under this regulation, is guilty of an offence.

Penalty – A fine not exceeding K10,000.00 per day for each day of non-compliance.

72. OPERATING WITHOUT CERTIFICATE.

A person, who operates any apparatus for which a Certificate of Proficiency is required under this regulation without having the appropriate certificate, is guilty of an offence.

Penalty – A fine not exceeding K10,000.00 per day for each day of illegal operation.

73. GENERAL PENALTY.

(1) A person who contravenes or fails to comply with any provision of this regulation or, in the case of a radiocommunications licensee, the conditions of a radiocommunications licence, is guilty of an offence.

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Penalty – Where no other penalty is provided in respect of the provision, a fine not exceeding K10,000.00.

(2) Where the owner or importer of any apparatus or the holder of a radiocommunications licence in respect of any apparatus contravenes or fails to comply with any provision of this regulation, or of the licence, in relation to the apparatus, the court that convicts him, in addition to or in substitution for any other penalty, may order that the apparatus be forfeited to the State.

(3) Apparatus forfeited under Subsection (2) may be seized by an authorised officer and disposed of or otherwise dealt with as NICTA directs.

PART VII. – GENERAL.

74. REGISTER OF RADIOCOMMUNICATIONS LICENCES.

NICTA shall publish on its public register all radiocommunications licences issued, renewed or traded, any variations made to those licences and any authorisations or variations lodged pursuant to Subsection 75(1)(a).

75. REGISTER OF THIRD PARTY AUTHORISATIONS.

(1) An apparatus licensee who under Section 5 authorises a third party to operate apparatus under its licence, or varies such authorisation, shall, unless NICTA otherwise directs –

- (a) cause a copy of the authorisation or variation to be lodged with NICTA; and
- (b) cause a copy of the authorisation or variation to be kept at its registered office;
- (c) provide a copy of the authorisation or variation to the third party; and
- (d) retain a copy of the authorisation or variation for at least one year after the authorisation or variation ceases to be in force.

(2) A third party authorised to operate apparatus under an apparatus licensee's licence must –

- (a) except in the case where Subsection (2)(b) applies, clearly exhibit any authorisation, and any variation, provided to it in accordance with Subsection (1)(c) at all times in the room or place where the apparatus to which the authorisation, and any variation, relates is situated;
- (b) where it is not practical to exhibit the authorisation, and any variation, in accordance with Subsection (2)(a), make the authorisation, and any variation, available for inspection at all reasonable times on demand by an Inspector; and
- (c) retain a copy of the authorisation, and any variation, for at least one year after the authorisation or variation ceases to be in force.

(3) NICTA may direct that a spectrum licensee who under Section 5 authorises a third party to operate apparatus under its licence, or varies such authorisation, comply with the obligations in Subsections (1) and (2) as if the spectrum licensee were an apparatus licensee.

76. DISTRESS CALLS.

(1) A person using or operating an apparatus shall accept with absolute priority a distress call or message regardless of its origin and reply or take immediate action in respect of the call or message and without unnecessary delay, retransmit it to the appropriate authority.

(2) Notwithstanding any other provision of this regulation, any apparatus may be operated by any person to the extent required in the case of any emergency involving safety of life or property.

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77. INDEMNITY.

NICTA, an Inspector or any authorised officer, or any other person exercising or performing powers or functions under this regulation, is not responsible for any act or omission done *bona fide* and without negligence under or for the purposes of this regulation.

78. SERVICE OF NOTICES.

Notwithstanding any other provision of any other law, any notice or other document required or permitted by this regulation to be given to or served on a licensee or the holder of a certificate of proficiency may be given or served either personally or by acknowledged receipt registered post addressed to his usual or last-known postal address.

79. APPLICATION OF THE INTERNATIONAL TELECOMMUNICATION CONVENTION, ETC.

(1) Subject to the Act and this regulation, the provisions of the ITU Convention and the Radio Regulations apply to and in relation to all stations as if enacted in this regulation.

(2) NICTA is responsible for providing all returns and information required by the ITU and its agencies.

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SCHEDULE 1. – APPARATUS LICENCE CATEGORIES AND FIXED FEES.

Section 6.

FIXED FEES				
Service Type	Item No.	Apparatus Type	Application Fee K	Annual Fixed Apparatus Fee K
Fixed	1.	Point-to-point station (duplex)	100	1000
	2.	ISM point-to-point station (duplex)	50	500
	3.	Cellular Base Station	460	4600
	4.	Point-to-point station (simplex)	50	500
	5.	Point-to-multi-point station	110	1100
	6.	ISM point-to-multi-point station	60	600
	7.	Fixed earth station (< 2.4m dish)	95	950
	8.	Fixed earth station (> 2.4m dish)	250	2500
	9.	Satellite control(TT&C) station	250	2500
Mobile	10.	Aeronautical station	127	1266
	11.	Aircraft station	20	200
	12.	Cellular base station	460	4600
	13.	Coast station	125	1250
	14.	Limited coast station	25	250
	15.	Handphone station other than a cellular mobile access device	20	22
	16.	Land mobile station	20	60
	17.	Base station	25	245
	18.	Corporate station	70	700
	19.	Mobile earth station	30	300
	20.	Handheld earth station	20	65
	21.	Paging base station	20	100
	22.	Repeater station	20	120
	23.	Ship station	20	200
Broadcasting	24.	AM radio broadcasting transmitter station	28	275
	25.	FM radio broadcasting transmitter station	50	500
	26.	Television broadcasting transmitter station	250	2500
	27.	Narrowcasting station (sound)	23	- 230
	28.	Narrowcasting station (TV)	500	5000
Amateur	29.	Amateur station	20	22
Space	30.	Space station	5100	20000

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FIXED FEES				
Service Type	Item No.	Apparatus Type	Application Fee K	Annual Fixed Apparatus Fee K
Radiodetermination	31.	Radiolocation station	22	220
	32.	Radionavigation station	30	300
Meteorological	33.	Meteorological station	29	290
Radio Dealer Full	34.	N/A	150	1500
Radio Dealer Limited	35.	N/A	50	500

In this Schedule –

“aeronautical mobile service” means a radiocommunications service between aeronautical stations and aircraft stations or between aircraft stations;

“aeronautical station” means a land station in the aeronautical mobile service established to communicate with aircraft stations and aeronautical stations. ;

“aircraft” includes helicopter, airship, glider and a balloon;

“aircraft station” means a station located on board an aircraft and used to communicate with aeronautical stations and other aircraft stations;

“AM radio broadcasting transmitter station” means a fixed station intended to transmit broadcasting services in the radiofrequency bands designated by NICTA for AM radio broadcasting;

“amateur service” means a radiocommunications service for the purpose of self training, inter-communication and technical research carried out by duly authorised persons interested in radio technique solely with personal aims and without pecuniary interest;

“amateur station” means a station operating in the amateur service;

“base station” means a fixed station in the land mobile service used to communicate with land mobile stations, handphone stations and other base stations;

“broadcasting station” means a station intended for the provision of a broadcasting service;

“cellular mobile access device” means a handphone station used to access a radio network in one of the cellular bands;

“cellular base station” means a fixed station used to link any cellular mobile access device to a network;

“coast station” means a land station in the maritime mobile service established to communicate with ship stations for the transmission of and/or reception of messages on behalf of the general public;

“corporate station” means one repeater and any number of base stations, land mobile stations and handphone stations using the same single semi-duplex channel in the VHF or UHF band;

“earth station” means an apparatus located either on the earth’s surface, or within the earth’s atmosphere established for communication with one or more space stations or other earth stations by means of satellites or other objects in space;

“fixed earth station” means an earth station established at a fixed location;

“fixed service” means a radiocommunications service between specified fixed points on land;

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- “fixed station” means a station established to operate in the fixed service which does not include an earth station;
- “FM radio broadcasting transmitter station” means a fixed station intended to transmit sound broadcasting services in the radiofrequency bands designated by NICTA for FM radio broadcasting;
- “handheld earth station” means an earth station consisting of both transmitting and receiving facilities which is designed to be carried by hand or on the person;
- “handphone station” means a station in the land mobile service which is designed to be carried by hand or on the person;
- “ISM” means industrial, scientific and medical applications of radio frequency energy as defined in the ITU-R standards;
- “land mobile service” means a radiocommunications service between base stations, land mobile stations and handphone stations;
- “land mobile station” means a station in the land mobile service fitted to a moving platform or vehicle or which is designed to be carried by hand or on the person and includes a cellular mobile access device and a handphone station;
- “land station” means a station on land;
- “limited coast station” means a coast station used for communications only with ships, excluding all messages of a public correspondence nature;
- “maritime mobile service” means a radiocommunications service between coast stations and ship stations or between ship stations;
- “meteorological station” means a station used for meteorological, including hydrological, observations and explorations;
- “meteorological station” means a station used for meteorological, including hydrological, observations and explorations;
- “mobile earth station” means an earth station for use whilst in motion or during halts at unspecified points other than a handheld earth station;
- “narrowcasting service” means an applications service that supplies content which is intended for a restricted number of viewers or listeners;
- “narrowcasting station” means a fixed station in the narrowcasting service;
- “paging base station” means a station that provides one way radio transmission in order to communicate a message or instruction to one or more paging receivers;
- “point-to-multi-point station” means a fixed station established to exchange radiocommunications with several other stations;
- “point-to-point station” means a fixed station established to exchange radiocommunications with another station;
- “radio astronomy service” means a service involving the use of radio astronomy;
- “radiodetermination” means the determination of position, velocity and/or other characteristics of an object or the obtaining of information relating to these parameters by means of the propagation properties of radio waves;
- “radiodetermination service” means a radiocommunications service for radiodetermination;
- “radiolocation” means radiodetermination used for purposes other than those of radionavigation;
- “radiolocation service” means a radiodetermination service for the purpose of radiolocation;
- “radiolocation station” means a station in the radiolocation service;
- “radionavigation” means radiodetermination used for the purposes of navigation, including obstruction warning;

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- “radionavigation service” means a radiodetermination service for the purpose of radionavigation;
- “radionavigation station” means a station in the radionavigation service;
- “repeater station” means a station used to improve service coverage by receiving a signal and relaying it through a transmitter or transmitters having superior propagation in desired directions;
- “satellite control (TT&C) station” means a station used for telemetry, tracking and control of space stations;
- “ship” includes every kind of vessel or floating or submerged craft of any size, not being a ship that is permanently moored;
- “ship station” means a station located on board a ship and used to communicate with stations excluding communications using satellite systems;
- “space station” means that part of a satellite system or network which excludes all earth stations and earth based installations;
- “station” means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunications service or the radio astronomy service;
- “television broadcasting transmitter station” means a fixed station intended to transmit television broadcasting services

SCHEDULE 2. – ANNUAL VARIABLE SPECTRUM FEE FOR SPECTRUM AND APPARATUS LICENCES.

Section 6.

ANNUAL VARIABLE SPECTRUM FEE	
Annual variable spectrum fee payable =	
$V \times (2600 \div F) \times B \times T \times L$	
Notes to formula –	
<p>Standard baseline value (V) is the baseline value of 1 MHz of spectrum at 2,600 MHz and is prescribed to be K454 as at the Succession Date until 30 June 2011 and thereafter as adjusted annually on 1 July to reflect the change in the applicable Consumer Price Index for the preceding calendar year.</p> <p>The Minister, acting on advice from NICTA, may make a determination to adjust the value of V.</p>	
<p>Frequency (F) is –</p> <p>(a) for frequencies below 30MHz, a value of 30;</p> <p>(b) for frequencies between 30MHz and 30,000MHz, the midpoint in MHz of the band in NICTA’s frequency band plan in which the bandwidth sought to be licensed is located; and</p> <p>(c) for frequencies above 30,000MHz, a value of 30,000.</p>	

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Bandwidth (B) is the total bandwidth in MHz the subject of the licence.
Type (T) represents the relative extent to which the service type licensed denies others access to spectrum being values as determined by NICTA in accordance with any guidelines issued under Section 6(7), having regard to the type of radiocommunications licence and the type of any station.
Location (L) represents the relative value of the geographic area in which apparatus or spectrum is to be used as determined by NICTA in accordance with any guidelines issued under Section 6(7), having regard to – <ul style="list-style-type: none"> (a) the population of the area; and (b) the nature of the economic activity in the area; and (c) the remoteness of the area; and (d) the level of radiocommunications congestion.

SCHEDULE 3. – FEES PAYABLE IN RESPECT OF EXAMINATIONS FOR CERTIFICATES OF PROFICIENCY.

Section 6.

Item No.	Classes of Certificate of Proficiency	Fee per subject K	Certificate Fee K
	Operator's Certificates		
1.	GMDSS	200	100
2.	MROCP	200	100
3.	Amateur	0	100
	Certificate granted without examination		
4.	Holder of international qualification	0	100
5.	Granted on NICTA discretion	0	100

SCHEDULE 4. – OTHER FEES.

Sections 6, 9, 14(2), 30(3).

Item No.	Item	Fee K
1.	Application fee for spectrum licence allocated on an administrative basis	5000
2.	Application to vary conditions of licence	500
3.	Application to assign or transfer of licence	50% of the relevant application fee
4.	Change of particulars of licence	200
5.	Copies or extracts from public register	K2.50 per page

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Item No.	Item	Fee K
6.	Replacement of licence, certificate or permit (lost, destroyed, etc)	K25 per page
7.	Examining apparatus submitted for approval under Section 30(3)(a)	K100 K150 per hour
8.	Re-examining apparatus submitted for approval under Section 30(3)(b)	K50 K75 per hour

MADE this *twenty-ninth* day of *October*, 2010

Paulhas Matine
GOVERNOR GENERAL