

No. xx of 201x

AN ACT

entitled

National Information and Communications Technology Amendment Act 201x

Being an Act to amend the *National Information and Communications Technology Act 2009*.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting on advice.

1. AMENDMENT TO THE NATIONAL ICT ACT

- (1) Schedule 1 amends the *National Information and Communication Technology Act 2009*.

Schedule 1 ***Amendment***

[1] SUBSECTION 4(1) (definition of “eligible corporation”)

Omit “and”, substitute “or”.

[2] SUBSECTION 4(1) (definition of “UAS Board”)

Omit the definition

[3] SUBSECTION 4(1) (definition of “UAS Secretariat”)

Insert “UAS Secretariat means the secretariat that attends on NICTA’s behalf to the administration of the Universal Access Scheme and the Universal Access Fund , established under Section **Error! Reference source not found.** ”

[4] PARAGRAPH 32(2)(b)

Omit “10%”, substitute “20%”.

[5] SECTION 38

After Subsection (2), insert:

- (3) NICTA may employ qualified Auditors as it sees fit to conduct audits of its accounts and may submit such audit reports as part of its reporting obligation under Subsection (2).

[6] SUBSECTION 53(1)

Omit “The Head of State, acting on advice, may make regulations”, substitute “The Minister, acting on a recommendation from NICTA, may make a determination”.

[7] PARAGRAPH 88 (b)

Repeal the paragraph, substitute the following:

- (b) NICTA shall develop, and cost UAS Projects to give effect to Government Policy;

[8] PARAGRAPH 88 (d)

Repeal the paragraph.

[9] PARAGRAPH 88 (g)

Omit “Each of the UAS Board,”.

[10] SECTION 91 HEADNOTE

Omit headnote “UAS BOARD.”, substitute “FUNCTIONS OF NICTA WITH RESPECT TO THE FUND.”

[11] SUBSECTION 91 (1)

Omit the subsection and renumber subsection (2) as subsection (1)

[12] RENUMBERED SUBSECTION 91 (2)

Omit “the UAS Board”, substitute “NICTA under this Part”.

[13] SECTION 91

Insert the following subsections after renumbered subsection(1):

- (2) Pursuant to Part VI and Part VIII, NICTA may require an operator to provide co-location or other forms of access to and sharing of network facilities or spectrum to any contractor under this part on the basis of commercially negotiated rates or other terms and conditions.
- (3) A person who fails to comply with a lawful direction of NICTA under subsection (2) is guilty of an offence.

Penalty – In the case of an individual, a fine not exceeding K100,000.00 for a first offence or, for a subsequent offence, the greater of K500,000.00 or three (3) times the value of the benefit that the individual has obtained directly or indirectly from the contravention.

Penalty – In the case of a body corporate, a fine not exceeding K1,000,000.00 for the first offence, or, for a subsequent offence, the greater of K2,000,000.00 or three (3) times the value of the benefit that the body corporate has obtained directly or indirectly from the contravention.

[14] SECTION 92

Repeal the section.

[15] SECTION 93

Repeal the section.

[16] SECTION 94

Repeal the section.

[17] SECTION 95

Repeal the section.

[18] SECTION 96

Repeal the section.

[18] SECTION 97

Repeal the section.

[19] SUBSECTION 98(1)

Omit “the UAS Board and”.

[20] SUBSECTION 98(2)

Omit “the UAS Board and”.

[21] PARAGRAPH 99(2)(a)

Omit “or the UAS Board”.

[22] PARAGRAPH 99(2)(a)

Omit “their respective”, substitute “its”.

[23] PARAGRAPH 99(2)(c)

Omit “tender”, substitute “selection”

[24] SUBSECTION 103 (4)

Omit “The UAS Board”, substitute “NICTA”.

[25] SUBSECTION 103 (5)

Omit “the UAS Board”, substitute “NICTA”.

[26] PARAGRAPH 104 (2)(c)

Omit, “collaborating with the UAS Board to determine”, substitute “determining”.

[27] SECTION 106

Insert the following new subsection (2):

- (2) Where an audit under subsection (1) is not completed within 6 months after the end of a financial year NICTA may appoint an independent auditor for the Universal Access and Service Fund, who shall provide an annual audited financial statement that shall be included in NICTA’s annual report to the Minister.

Renumber current subsection 2 as subsection 3.

[28] PARAGRAPH 107 (2)(a)

Omit “as advised to NICTA by the UAS Board,”.

[29] NEW SECTION 107A

Before section 108, insert:

107A PRINCIPLES OF UNIVERSAL ACCESS AND SERVICE PROJECTS

Any project under the UAS Fund should abide by the following principles–

- (1) The UAS Fund shall seek to promote efficient, self-sustaining projects which may continue to expand access to information and communications on their own initiative, requiring the minimum amounts of UAS Fund resources possible.
- (2) The UAS Fund may be used to finance projects to the extent necessary to create adequate economic incentives for investors.
- (3) Notwithstanding the provisions of subsection (1) and (2) complementary strategies to meet UAS objectives and targets may be implemented by NICTA.

- (4) Such mechanisms under subsection (3) may include additional roll-out targets, microcredit programmes, public-private-partnerships, build-transfer-operators (BTOs), cooperatives, or multi-purpose community centres.
- (5) For the avoidance of doubt, projects financed by the UAS Fund–
 - (a) include but are not limited to physical infrastructure and communications network projects; and
 - (b) include ICT training and education for adults and children.

[30] SUBSECTION 108 (1)

Omit, “the UAS Board shall engage NICTA to”, substitute “the UAS Secretariat shall”.

[31] PARAGRAPH 108 (1)(d)

Omit, “the UAS Board”, substitute “the UAS Secretariat”.

[32] PARAGRAPH 108 (1)(f)

Omit “for consideration by the UAS Board,”

[33] SECTION 108

Insert new Paragraph (g):

- (g) The UAS Secretariat shall submit a draft report to NICTA, which shall then submit the final report prepared under (f) to the Minister to inform him of their findings.

[34] SUBSECTION 108(4)

Omit “and the UAS Board shall have regard to”, substitute “shall take into account”.

[35] PARAGRAPH 108(4)(f)

Omit “the UAS Board”, substitute “NICTA”.

[36] PARAGRAPH 108(5)(c)

Omit “the UAS Board and”.

[37] SUBSECTION 108(6)

Omit “rejected”, substitute “approved”.

Insert at the end of the Subsection “other than any UAS Projects specifically rejected by the Minister”.

[38] RENUMBERED SUBSECTION 108(9)

Repeal the subsection and insert:

- (9) Rejection by the Minister of a particular UAS Project for implementation does not preclude NICTA from re-evaluating and re-submitting the UAS Project at a later date to the Minister in accordance with Subsection (3).

[39] SUBSECTION 109(1)

Omit “successful bidder, substitute “qualified contractor”.

[40] SUBSECTION 109(1)

Omit “by the Minister”.

[41] SUBSECTION 109(1)

Omit “(5)(b)”.

[42] NEW SECTION 109A

Insert:

109A. Alternative Mechanisms to Distribute Funds

- (1) Notwithstanding the provisions of section 109 above, NICTA may also, following public consultation as provided for in sub-section 3 below, determine to distribute the funds on the basis of a restricted bidding procedure, a sole source procurement procedure or an emergency procurement procedure.
- (2) NICTA shall determine which method of procurement is appropriate in the circumstances and manage the procurement process in accordance with the requirements and procedures set out in this Act and the regulations.
- (3) Where NICTA intends to use a method of procurement other than open competitive bidding, it shall notify the public of its intention to do so and the reasons for choosing of the proposed procurement method to be used.

[43] SUBSECTION 110(1)

Omit “bidders”, substitute “qualified contractors”.

[44] SUBSECTION 111(1)

Omit “the competitive selection”, “substitute “a competitive selection”.

[45] SUBSECTION 116(6)

Omit “successful bidder”, substitute “qualified contractor”.

[46] SUBSECTION 119(1)

Omit “the UAS Board and”.

[47] PARAGRAPH 119(2)(a)

Omit “and the UAS Board”.

[48] SUBSECTION 119(3)

Omit “UAS Board or”.

[49] SECTION 120

Omit “The UAS Board” wherever it occurs, including in the headnote, substitute “NICTA”.

[50] SECTION 121

Omit “the UAS Board”, substitute “NICTA under this Part”.

[51] SUBSECTION 122 (2)

Omit and substitute:

- (4) NICTA shall include in the Universal Access and Service Fund website information regarding the activities undertaken under this Part in relation to the Funding fulfilling the objective set out in Section, except for any confidential information but including (without limitation) –
- (a) NICTA’s annual reports;
 - (b) information about UAS Project proposals;
 - (c) information about current UAS Project requests for proposals;
 - (d) information about current and past UAS Projects which have been awarded funds from the Universal Access and Service Fund;
 - (e) the Act and any other legislation, regulations, guidelines or procedures regarding the fulfilment of the objectives set out in Section; and
 - (f) any other information that NICTA considers relevant and appropriate for inclusion on the website.

[52] SUBSECTION 130(1)

Omit “On receiving”, substitute “After a period of 20 days from the receipt of”.

[53] SUBSECTION 130(4)

Omit “thirty (30)”, substitute “forty (40)”.

[54] PARAGRAPH 138(a)

After “seeker”, insert “and registered by NICTA under Section 138A”.

[55] SECTION 138

After section 138, insert:

138A. REGISTRATION OF AGREEMENTS

- (1) An access provider that enters into an agreement with an access seeker for the supply of a declared service shall, within ten (10) days of the execution of that agreement, submit a copy of the signed agreement to NICTA for registration.
- (2) After considering an agreement submitted under Subsection (1), NICTA shall decide whether or not to register it.
- (3) NICTA shall not register an agreement submitted under Subsection (1) unless NICTA is satisfied that the agreement:
 - (a) is consistent with the non-discrimination obligations that are applicable to the access provider;
 - (b) contains terms and conditions that are reasonable in accordance with Section 126; and

- (c) is consistent with the general pricing principles and any service-specific pricing principles.
- (4) If NICTA does not make a decision under Subsection (2) within ten (10) days of receiving a copy of the signed agreement, NICTA shall be deemed to have accepted the agreement for registration.
- (5) If NICTA registers an agreement, or is deemed to have registered an agreement under Subsection (4), NICTA shall:
 - (a) given both the access provider and the access seeker a written notice stating that the agreement has been registered; and
 - (b) record the registration of the agreement and the parties to the agreement, but not a copy of the agreement, in its public register.
- (6) If NICTA decides not to register an agreement, NICTA shall give both the access provider and the access seeker a written notice stating that the agreement has been refused registration and setting out:
 - (a) the reasons for NICTA's decision not to register the agreement; and
 - (b) the amendments that would need to be made to the agreement to enable it to be registered by NICTA.

[56] SUBSECTION 139(2)

Omit "access seeker", substitute "access provider".

[57] SUBSECTION 141(1)

After "undertaking", insert "in the form of a standard contract".

[58] PARAGRAPH 141(1)(a)

- (a) Omit "or" (first occurring), substitute "and".
- (b) Omit "or both".

[59] SECTION 141

After Subsection 141(1), insert:

- (1A) An access provider may on its own initiative give NICTA a RIO, or a proposed variation to an existing RIO, at any time provided that the RIO or the proposed variation is compliant with section 138A
- (1B) NICTA may at any time direct an access provider to submit:
 - (a) a RIO; or
 - (b) a variation to an existing RIO that has been accepted by NICTA and that remains in operation.
- (1C) NICTA may only direct an access provider in accordance with subsection (1B) in circumstances where, if the existing RIO were to be submitted for registration under section 138A it would not be accepted because of non-compliance with subsection 138A(3) of that section.
- (1D) If NICTA has directed an access provider under paragraph (1B)(b), NICTA may also direct that access provider to supply, or to continue to supply, services that are covered by the existing RIO as if an acceptable amendment has been made to that RIO.
- (1E) An access provider given a direction under Subsection (1B) must submit the requested RIO (or the requested variation to an existing RIO) within 60 days of NICTA's direction.

[60] SUBSECTION 141(3)

Omit “may cover either standard prices (with price-related terms), or standard non-price terms and conditions, or both, for a declared service, but in so far as it covers any or all of these matters, it”.

[61] SUBSECTION 141(4)

After “operation”, insert “and the access provider was not directed to prepare that RIO under Subsection 1B”

[62] SUBSECTION 142(1)

Repeal the subsection, substitute:

- (1) A RIO, or a proposed variation to an existing RIO, must comply with Section 138A

[63] SUBSECTION 160(1)

Omit “On receiving”, substitute “After a period of 20 days from the receipt of”

[64] SUBSECTION 204(1)

Omit “ other than a network licensee or a cabling licensee”.

[65] SECTION 235

Insert:

- (3) NICTA is not required to publish a separate report under Subsection (1) following:
 - (a) a public inquiry under Section 127 if NICTA publishes the report mentioned in paragraph 129(1)(b); or
 - (b) a public inquiry under Section 157 if NICTA publishes the report mentioned in paragraph 159(1)(b).

[66] PARAGRAPH 258(1)(e)

Insert “up to a maximum of ten (10) additional days” after “period”

[67] SUBSECTION 304(2)

After “an ICT licence”, insert “during the transition period”.