



## ANALYSIS

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1992, No. 11

An Act to amend the Telecommunications Act 1989

(21 December 1992)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title and commencement - (1) This Act may be cited as the Telecommunications Amendment Act 1992 and shall be read together with and deemed part of the Telecommunications Act 1989 (hereinafter referred to as "the principal Act").

(2) This Act shall be deemed to have come into force on the 1st day of July 1991.

2. Interpretation - Section 2 of the principal Act is amended by inserting after the definition of "Telecommunication" the following definition:

"Telecommunications link" means a line, radio, frequency or other medium used for telecommunications."

3. Interference with network - Section 6 of the principal Act is amended by inserting after the word "owned" the words "leased or operated."

4. Rights of entry in respect of existing works and lines - Section 12 of the principal Act is amended by inserting in subsection (1) after the words "existing lines owned" the words "leased or operated."

5. Protection of existing works - Section 23 of the principal Act is amended by inserting after the word "owns" the words "leases or operates."

6. Transfer of Crown assets and liabilities to Company - Section 42 of the principal Act is repealed and the following section substituted -

"42. Transfer of Crown assets and liabilities - (1) Notwithstanding any Act, rule of law or agreement to the contrary, the Minister may on behalf of the Crown, for such consideration and on such terms and conditions as shall be approved by Cabinet, do any one or more of the following:

- (a) transfer or assign to any company within the Telecom group of companies either in part or in whole, the assets and liabilities of the Crown (being assets and liabilities relating to the operation of a network) for the purpose of enabling the Company to provide, operate and maintain telecommunication services or to enable any other company within that group, in such manner as the Minister may direct, to assist the Company in the provision of such services;
- (b) authorise any person (whether or not there has been transferred or assigned to that person any assets or liabilities relating to the operation of a network) to act on behalf of the Crown in providing goods and services to the Company;
- (c) authorise any person to whom there has been transferred or assigned any assets or liabilities relating to the operation of a network, to manage those assets and liabilities on behalf of the Crown;
- (d) grant to any company within the Telecom group of companies leases (whether by way of transfer or assignment), licences, easements, permits or rights of any kind in respect of any assets or liabilities of the Crown (being assets and liabilities relating to the operation of a network) for the purpose of enabling the Company to provide, operate and maintain telecommunication services or to enable any other company in that group, in such manner as the Minister may direct, to assist the Company in the provision of such services;

(2) Every transfer, assignment, authorisation or grant made (whether before or after the coming into force of this Act) with the intention that such transfer, assignment, authorisation or grant give effect to the provisions of subsection (1) shall notwithstanding the date that it shall take effect be deemed to take effect on the date that the principal Act came into force.

(3) Assets that are fixed to, or are under or over, any land may be transferred or assigned pursuant to this Act whether or not any interest in the land is also transferred or assigned. Where any such asset is so transferred or assigned, the asset and the land shall be regarded as separate assets each capable of separate ownership.

(4) Any asset or liability of the Crown may be transferred or assigned pursuant to this Act whether or not any Act or agreement relating to the asset or liability permits such transfer or assignment or requires any consent to such a transfer or assignment.

(5) Where a transfer or assignment of the kind described in subsection (4) takes place -

- (a) the transfer or assignment shall not entitle any person to terminate, alter, or in any way affect the rights or liabilities of the Crown, the transferee or assignee under any Act or agreement;
- (b) where the transfer or assignment is registrable, the person responsible for keeping the register shall register the transfer or assignment forthwith after written notice of the transfer or assignment is received by him or her from any person authorised for this purpose by the Minister;
- (c) any satisfaction or performance by the transferee or assignee in respect of the asset or liability shall be deemed to be also satisfaction or performance by the Crown;
- (d) any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the transferee or assignee shall be deemed to be also to the benefit of the Crown.

(6) No provision in any agreement limiting the Crown's right to either sell, transfer, assign or provide the use or benefit of any assets to third parties, or for determining the consideration for or in respect thereof, or obliging the Crown to account to any person for the whole or part of the proceeds therefrom, or obliging the Crown to pay a greater price than otherwise by reason of or as a consequence of the sale, transfer, assignment or the provision of the use or benefit of any assets to third parties, shall have any application or effect in respect of any agreement entered into or effected pursuant to or under this Act.

(7) Where -

- (a) rights or obligations to provide goods or services to third parties are transferred to a company within the Telecom group of companies; and
- (b) those goods or services have previously been provided by the Crown on terms and conditions wholly or partly prescribed by any Act; and
- (c) the Queen's Representative has by Order in Executive Council declared that this subsection shall apply in respect of those goods or services;

the goods or services shall, to the extent that those terms and conditions are not already contained in contracts between the Crown and third parties, from the date of transfer be deemed to be provided pursuant to contracts between the transferee and the third parties (whether or not the Act is repealed). Each such contract shall be deemed to include such of the terms and conditions contained in that Act (with all necessary modifications), and such of the following provisions as are specified in the Order in Executive Council;

- (d) a condition permitting termination at any time by the third party on giving 14 days notice to the transferee; and
- (e) a condition permitting variation or termination at any time by the transferee on giving to the third party 1 month's notice in such manner (including newspaper advertising) as the transferee thinks fit.

## (8) Where -

- (a) land, interests in land, licences, permits, or rights created on terms and conditions wholly or partly set out in any Act are transferred or assigned to a company within the Telecom group of companies pursuant to this Act; and
- (b) the Queen's Representative has by Order in Executive Council declared that this subsection shall apply in respect of that land or those interests, licences, permits, or rights -

then, whether or not the Act is repealed, such of the terms and conditions set out in the Act as are specified in the Order in Executive Council (with all necessary modifications) shall continue to apply in respect of that land or those interests, licences, permits, or rights after the transfer or assignment unless the transferee or assignee, as the case may be, and the holders of that land or those interests, licences, permits, or rights otherwise agree.

(9) In this section the term "Telecom group of companies" shall mean Cook Islands Telecommunication Holdings Limited, Cook Islands Telecommunication Assets Limited, Telecom Cook Islands Limited and shall also include any other person (whether corporate or otherwise) determined to be part of that group by the Queen's Representative by Order in Executive Council.

7. Savings - Every document made or anything whatsoever done and every right acquired by or given and every obligation incurred in the name of the Company before the date of the Company's incorporation and in pursuance of the Company performing its functions and duties under the principal Act shall if capable of having been validly made done acquired or incurred after the date of the Company's incorporation be deemed to have been validly made done acquired or incurred as if the Company were so incorporated and every network managed operated or controlled by the Company before the Company's date of incorporation shall be deemed to have been managed operated and controlled by the Company as if it were so incorporated.

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This Act is administered by Telecom Cook Islands Limited