MINISTRY OF TECHNOLOGY, COMMUNICATION AND INNOVATION

REQUEST FOR EXPRESSION OF INTEREST FOR CONSULTANCY SERVICES

Authorised under Section 24(2) of the Public Procurement Act 2006

Invitation for Expression of Interest (EOI) for the Enlistment of the service of a consultancy firm for the merger of the Information and Communication Technologies Authority and the Independent Broadcasting Authority

1. Introduction

The Ministry of Technology, Communication and Innovation is inviting Expression of interest (EOI) from renowned Local and International Consultancy Firms to provide Consultancy Services for the merger exercise of the Information Communication Technologies Authority (ICTA) and the Independent Broadcasting Authority (IBA).

The EOI is expected to lead to a Request For Proposals (RFP) for the above mentioned Consultancy Services from short-listed applicants.

2. Background

It is planned to merge the Information Communication Technologies Authority (ICTA) with the Independent Broadcasting Authority (IBA), which is the merger of the ICT infrastructure & ICT services regulator (ICTA) with the content regulator (IBA) for the broadcasting sector for the Republic of Mauritius. The ICT Authority and the IBA are two statutory bodies established under the ICT Act 2001and the IBA Act respectively. These Acts can be downloaded from the following URLs:

https://www.icta.mu/documents/laws/ict_act.pdf

https://www.icta.mu/documents/laws/iba.pdf

For this purpose, a project team chaired by the Permanent Secretary of the parent Ministry of the ICTA and the IBA which is the Ministry of Technology, Communications and Innovation (MTCI) has already come up with a Preliminary Report (**Annex1**). This Report sets the backdrop for the merger exercise which identifies the respective issues encountered by the ICTA and the IBA in the enforcement of their respective Acts, based on hands-on experience gathered separately over the previous 15 years of their existence. These issues will need to be taken into account during the merger exercise with a view to coming up with a streamlined, harmonised and effective converged agency.

In this context, the MTCI proposes to enlist consultancy services from local and international agencies with hands-on experience on this highly specialised subject matter, where they have been involved in consultancy work for similar merger exercises in 3 different countries. This consultancy exercise will need to take into account both international best practices as well as specificities and requirements of the local context identified in the Preliminary Report and through interactions with local relevant stakeholders in order to come up with the required organisational merged structure and the required merger Bill.

3. Guiding Principles for the Merged Entity

Public Mission

The merged entity will have a duty to promote the interests of consumers, ensure fair competition in the market, and facilitate innovation and investment in the communications/broadcasting industry. The ultimate objective is to maintain a vibrant communications/broadcasting sector to enhance the international competitiveness of Mauritius.

Core values

In discharging its functions, the merged entity has to be open and transparent, fair and consistent, and engaging and supportive. To put these values into practice, it has to have the right mechanism and practices in place, including the publication of notices setting out the process and justifications for regulatory decisions, consultation with stakeholders including operators and consumers on matters that impact on the industry and consumers, publication of regular research and market analysis to provide basis for regulatory policy and intervention. It has to set up a mechanism to engage the industry and public in regulatory issues regularly.

Regulatory approach

The regulatory approach should suit the local context and be at par with international best practices. It should be proactive, with an emphasis on fulfilling the public mission of the regulator.

4. Scope of work of the Consultancy Team

In the light of the guiding principles spelt out above, the following scope of work is required to be implemented in two phases by the Consultancy Team.

Phase 1

(a) Undertake a situational analysis exercise by

(i) Reviewing the existing legislations under which ICTA and IBA have been established so as to build an understanding of the context;

(ii) Taking into account and getting a clear understanding of the issues identified in the Preliminary Report;

(iii) Interacting with relevant local stakeholders (ICTA, IBA, PMO, MTCI, MOFED, ICT Tribunal and licensed operators).

(b) Identify other issues relating to the proposed ICTA/IBA merger.

(c) Propose practical solutions on all issues identified above by taking into account the local context and benchmarking with international best practices.

(d) Detail out how a merged ICTA/IBA structure can optimise on the enforcement of these solutions in an effective manner by proposing common frameworks where applicable.

Phase 2

(e) Define the objects, powers and functions of the merged entity.

(f) Propose a detailed organisational structure for the merged entity, taking into account efficiency and effectiveness thereof.

(g) Prepare a draft legislation for the proposed new entity after taking into account existing parameters.

(h) Consult relevant stakeholders on the draft legislation and submit to the Permanent Secretary, MTCI a refined draft legislation after giving due consideration to proposals made by the stakeholders.

The above is not exhaustive. The Consultancy Team should undertake any other tasks necessary for ensuring a high quality deliverable to the client.

5. Project Deliverables

Key deliverables for the assignment will be for a duration of 4 months for phase 1 and 2 months for phase 2 respectively. At the end of each phase, the consultancy team shall submit the required deliverables and obtain the stakeholders' sign off thereon and the approval to proceed to the next phase as follows:

Phase 1

This phase will be dedicated to the scope of work as at 4(a) to 4(d) above and any other items identified by the consultancy team and the deliverable will be the issuance of a report thereon.

Phase 2

This phase will be dedicated to scope of work as at 4(e) to 4(h) above and the deliverable will be the proposed draft merger Bill.

All deliverables/reports to be submitted to the client should be in English language, in both hard and soft copies.

6. Qualifications and Experience

The Consultancy Team members shall comprise a blend of experts in the ICT domain, Management as well as in other relevant fields such as Accounting, Legal Drafting and HR. The Consultancy Team members should be of high international repute with relevant international project experience (minimum 10 years) in the communications and broadcasting sectors and must have carried out similar merger exercises in at least 1 other country.

The Consultancy Team members shall have experience working with governmental organisations as well as conducting user needs analysis and have project management qualifications. Team members should submit signed CV.

Selection shall be based on contractor's experience and qualifications best suited to this role.

7. Pricing

The proposals at this stage shall not contain any rates and other costs.

8. Requirements for Assessment

With a view to assess the proposals for short-listing, the consulting firms / Consultants are required to submit the following with relevant documentary evidence:

- A brief describing the firm, including the name, registration details, field(s) of activity, experience and financial details i.e. Audited reports and Audited Financial Statements for the past 5 years; and

- A description of the manner in which the operator/company proposes to plan, finance and provide the service.

The information requested shall be a pre-requisite to enable the Ministry to assess the firm's capability to provide the services required. The shortlisted proposals shall be invited thereafter to participate in a bidding process. EOIs are not transferable.

9. Request for Clarifications

Any clarifications sought by any bidder in respect of the short-listing exercise shall be addressed in writing to:

The Permanent Secretary
Ministry of Technology, Communication and Innovation
Level 7, SICOM Tower
Wall Street
Ebène, Republic of Mauritius

or

e-mail: psmtci@govmu.org or rbheekoo@govmu.org

so as to reach at least seven(7) days before the deadline for the submission of the Expression of Interest.

10. Submission of the Expression of Interest

The Expression of Interest in sealed envelope clearly marked "**MTCI/EOI 05/2017-18- Consultancy Services for the Enlistment of the services of a consultancy firm for the merger of the Information and Communication Technologies Authority and the Independent Broadcasting Authority"** and indicating the closing date should be addressed to The Permanent Secretary, Ministry of Technology, Communication and Innovation and deposited in the Bid Box located at the under mentioned address **on or before Monday 27 November 2017 up to 13 30 hours (local time) at latest.** Late bids will be rejected.

The Ministry is under no obligation to shortlist any bidder who expresses interest and reserves the right to annul the EOI exercise without incurring any liability whatsoever to any party.

Ministry of Technology, Communication and Innovation
Level 6, SICOM Tower
Wall Street
Ebène
Republic of Mauritius

Date: 9 November 2017

Annex I

Preliminary report of the Project Team working on the ICTA/IBA merger

1. Purpose

In the 2016/2017 Budget speech, Government announced its intention to merge the ICTA with the IBA. Subsequently, a Project Team under the chairmanship of the Permanent Secretary of the Ministry of Technology Communications and Innovation (MTCI) and members from the PMO, MOFED, ICTA and IBA was set up to look into this matter and at its first meeting, it was agreed to come up with a preliminary report which will give more clarity as to the way forward. The purpose of this report is to review whether the existing regulatory arrangement for the broadcasting and communications sectors still serves the best interest of Mauritius in this era of technological convergence in the ICT sector.

The paper is structured as follows:

- A background section which sets the backdrop both in the international and national contexts
- the respective issues encountered by the ICTA and the IBA in the enforcement of their respective Acts, based on hands-on experience gathered separately over the previous 15 years of their existence and which need to be addressed either in the merger or separately even if the merger does not happen,
- the proposed solutions thereon, and
- how a merged ICTA/IBA structure can optimise on the enforcement of these solutions in an effective manner.

2. Background

International context

Today, similar merged regulators as the one proposed by for ICTA/IBA are found in many EU countries, including Finland, Italy and the UK, as well as in Australia, Hong Kong, China, Malawi, Malaysia, South Africa and Tanzania. Governments in these countries believe that such structures are better equipped to address convergent environments where different services are increasingly offered over the same platform. In 2002, the UK government established OFCOM by merging five regulatory bodies into one, the Independent Television Commission, the Broadcasting Standards Commission, the Office of Telecommunications, the Radio Authority, and the Radiocommunications Agency. In 2005 in Australia, the Australian Communications Authority and the Australian Broadcasting Authority were merged to form the Australian Communications and Media Authority (ACMA) which has responsibility over telecommunications and broadcasting, including radio spectrum management and online content regulation. In the US and Canada, there has long been a single regulator responsible for the regulation of both the telecommunications and broadcasting sector – the US Federal Communications Commission and the Canadian Radio-television and Telecommunications Commission (CRTC).

These merged entities are responsible for regulating communications (both telecommunications & IT), broadcasting, radio communications and online content as the coexistence of two separate regulators, both dealing with similar issues but focusing on different sectors of the communications industry, is neither practical nor effective. Their creations recognise the changing nature of the communications environment whereby new digital technologies are allowing previously distinct sectors to compete across increasingly convergent markets using a range of different delivery platforms and the establishment of a merged entity enables a coordinated regulatory response to converging technologies and services.

The broadcasting and communications industries worldwide have been undergoing a major transformation for some time. This process is driven by technological advancement through digitisation and convergence. Digitisation has eased out the constraints on spectrum capacity and has been instrumental in fostering media convergence, which has enabled a single platform supporting telephony, broadcasting, and Internet access services ("multiple-play"), thereby generating opportunities for new services and business models. Moreover, the broadcasting market is becoming less vertically integrated as operators may not need to engage in the full range of conventional operation of a broadcasting station from content production, programming to transmission. The medium of transmission is highly flexible and versatile. The boundaries between communications, broadcasting and information technology are increasingly blurred. These developments have changed the landscape of the broadcasting and telecommunications industries fundamentally. As a result of these developments, the market entry barriers have been lowered substantially, particularly with regard to capital investment in conventional transmission networks. The new merged entity will be responsible for regulating communications, broadcasting, radio communications and online content. Its creation recognises the changing nature of the communications environment. In so doing, the Government recognises that new digital technologies are allowing previously distinct sectors to compete across increasingly convergent markets using a range of different delivery platforms.

The objective is to have a simpler and more flexible system where the regulator has delegated powers to act in response to fast-changing circumstances whereby a coordinated regulatory response to converging technologies and services is enabled.

The merged regulator is also empowered to have jurisdiction over the entire communications sector to ensure that different players are interacting with each other and participating in different market segments in a fair and competitive manner. A properly empowered single authority will be better equipped with the perspective and competence to deal with complicated cross-sectoral competition issues in a converging environment.

Moreover, a unified regulator will benefit both the regulator and the industry. In the first place, the single regulator will be a one-stop-shop for resolving regulatory issues in a converging environment. There will also be better assurance of consistency in regulatory approach and practice in a converged environment. Such an arrangement will also be helpful to the industry as it would reduce administrative work and enhance working efficiency. On the other hand, the regulator can pool different kinds of expertise together to tackle a communications issue.

Local context

One of the underpinning reasons for the merger of the regulators for the communications and broadcasting sectors is to ensure an optimal management of the finite range of the radiofrequency spectrum dedicated to these two sectors. On the international scene, prior to merger, radiofrequency spectrum dedicated for communications were managed separately from the set of radiofrequency spectrum dedicated for broadcasting. With the advent of technological convergence in the ICT sector this demarcation between these two set of radiofrequency spectrums has blurred away considerably, thereby justifying the need for only one entity to manage both set of frequencies. However, in the local context, such is not the case. In fact, the ICTA is already managing the whole set of radiofrequency spectrum for both communications and broadcasting since 2001. For example, if an applicant applies for a private radio with the IBA, pursuant to section 4 (n) of the IBA Act, the IBA is required to consult with the ICTA on the availability of frequencies. If same is available, the IBA then continues to process the application accordingly. Therefore, from this perspective, the reason for merging the ICTA with the IBA does not arise.

However, the existence of two separate regulators has shown its limitations in terms of content regulation. Under the ICT Act, one of the functions of the ICTA is to curtail illegal and harmful online contents. For the illegal online component, the ICTA has deployed an online content filtering solution dedicated for chills sexual abuse material which is illegal in Mauritius. However, when it comes to harmful online content, the ICTA has not enforced this component as it is not staffed and structured to do so.

On a more holistic note, the merger of the ICTA with the IBA is the merger of the ICT infrastructure & ICT services regulator with the content regulator for the broadcasting sector. At present, the ICTA is responsible for regulating the online content and in the merged structure, there will be a need to regroup broadcasting and online content regulation components together. Accordingly, the new merged structure should be equipped with the appropriate framework to handle content regulation on converged delivery platforms as well as to handle any other forthcoming content related item (such as regulation of spam) which the merged regulator might be called upon to regulate in future.

The new legislation main challenge will be to reconcile the differing regulatory traditions by re-examining the fundamental goals of regulatory intervention and ask under what circumstances it is needed. The need for regulation in an environment of convergence can be considered in terms of the public interest. It is essential to strike the right balance between broadcast and telecommunication regulation in the converged institution. This should be the fundamental principle in laying out the foundation. This will ensure that the new institution will meet its statutory obligations.

Additionally, in this merger exercise, it is suggested that the Postal Authority should not be left out. Presently, the ICTA is undertaking the functions of the Postal Authority as per the Postal Services Act 2002. The inclusion of the Postal Authority in the merger exercise makes sense from a streamlining of administrative overhead perspective.

The majority of converged regulators have put aside the regulation of advertising leading to the creation of another regulatory body to look upon advertising practice issue. In order to avoid additional costs, it will be judicial that the regulation of advertising remains under the jurisdiction of the converged regulator.

In other words, given the specificity of the local context as exemplified above, the ICTA/IBA merger exercise cannot be simply replicated based on a simple international benchmarking exercise only, but requires the involvement of the local stakeholders with hands-on experience to come up with an optimised and streamlined merged agency.

3. Issues to be addressed for the ICTA

To date, the ICT Authority has overseen the full liberalisation of the ICT sector since the 1st January 2003 by putting in place various licensing and regulatory frameworks, which have been designed based on the legal provisions of the ICT Act of 2001. However, with the evolving business models of the communications sector, there has been a global shift in the paradigm of regulation during the past fifteen years.

In the early stage where the primary role of the regulator was to defend the public against abuse of monopoly power, regulators generally focussed on issues relating to price setting and analysis of customers' complaints with their service providers. Nowadays, complexity of regulatory issues has grown with the complexity and convergence of telecommunications business. To this end, the licensing and regulatory frameworks are being called upon to evolve.

There is a need to understand who are the targeted beneficiaries and how best to deliver the earmarked benefits to the identified recipients. In the context of the ICT sector, key stakeholders are the Government, the service providers, and ultimately and most importantly, the consumers. The ICTA is generally tasked with the balancing of these stakeholders' individual interests against a backdrop of technological and service convergence, in order to sustain the healthy development of the ICT sector.

In order to be able to do so effectively, the forthcoming merger of the ICTA with the IBA is a timely opportunity to address topical issues in the light of convergence of technologies in the ICT sector so that solid legal and regulatory foundations are laid for the next decades which, in turn, will ensure sound and sustainable developments in this sector. In fact, the required piece of legislation for the merger will need to be flexible enough to enshrine the set of required frameworks, which will enable the deployment of process changes arising from the convergence of technologies. In order to achieve the required flexibility, a series of reforms is being proposed in the following different ICT segments which are under the responsibility of the ICTA:

- With respect to the ICT infrastructure regulatory component, there will be a need to review the current licensing framework so that firstly, an operator who offers a bundle of converged services on the same ICT infrastructure will no longer need to take out several licences with the ICTA which is seen as a barrier to innovation. In order to cater for this scenario, although our present licensing regime is already technology neutral, there will be a need to move towards a service neutrality based regime which will ensure more flexibility and minimize the need to take out several licences. Secondly, the review of the licensing should also cater for the deployment of an effective level playing field for operators which is not the case presently. This new regime will need to correctly specify the operations of licensees at the wholesale and retail levels. There is also a need to redefine the basis of license fees collection which will need to be geared towards a % revenue based framework to ensure a fairer contribution framework which takes into account the financial position of operators.

- There is a need to define a new section on spectrum management which is missing in the present Act. The amendment with respect to the management of the radio spectrum, will have as its main objective is to provide the converged regulator with additional modern tools in order to better manage the radio spectrum for Mauritius. For instance, these tools could include the possibility of using auctioning as a method for awarding spectrum in certain circumstances instead of the present spectrum licensing regime which is on a first come first serve basis. There will also be a need to come up with a framework to define the monetary value for the different frequency bands within the spectrum as over 60% of the licensing revenue is spectrum related which is in contrast with the present fixed spectrum fees prescribed. Moreover, with new upcoming technologies such as the Internet of things via 5G communications networks, an optimised method of managing spectrum (dynamic spectrum management) will be required. With dynamic spectrum management, sharing of this band will be made possible by the setting up of a frequency management database which will monitor the use of this frequency band as well as any interference issue which may arise therein. Therefore, this issue of dynamic

spectrum management is yet another aspect that needs to be catered for in the new Act for merger.

- Need for the definition of a cybersecurity regulatory framework in the functions of the ICT Authority is required. As Government builds for the future, it must do so in a safe and secure, yet transparent and accountable manner. Architecting for openness and adopting new technologies have the potential to make devices and data vulnerable to malicious or accidental breaches of security and privacy. They also create challenges in providing adequate notice of a user's rights and options when providing personal information. In this context, making full use of digital signatures for e-government services is mandatory. Although the legal, regulatory and licensing digital signatures frameworks have been in place since 2012 through the deployment of a Mauritian Public Key Infrastructure (PKI), the use of same for online government services is still pending and therefore, the possibility of making the use of digital signatures mandatory needs to be considered. On a side note, there is variation in terms of national implementation of fundamental principles, notably technology neutrality in the use of digital signatures. Some countries have enacted technology-specific legislation for digital signatures. This is the case in Mauritius where the use of digital signatures is only recognised through the deployment of PKI. With the advent of new technologies in cybersecurity such as the blockchain technology, it is also suggested that the possibility of amending the Electronic Transaction Act 2000 of Mauritius is explored in order to make it more generic so that all forms of e-signatures and other types of cybersecurity frameworks are recognised. Moreover, there will be a need for the effective deployment of a preventive regulatory cybersecurity framework which will complement the cyber security work already undertaken by other agencies in Mauritius. Two such examples could be in terms of mandating organisations to protect their computer systems and information from cyber-attacks through the deployment of a cybersecurity auditing framework and by the imposition of a cybersecurity standards framework for the importation of ICT devices and for the deployment of critical information infrastructure equipment.

- Another power that needs to be considered for the merger exercise is to equip the new regulator with enforcement powers in terms of carrying out investigations when required and for the imposition of fines to operators when they do not abide to directives from the regulator. In this context, there is a need to move from an Authority status to a Commission status. This will need to be assessed from a legal standpoint.

- There will be a need to redefine the basis of USF contributions which needs to be geared towards a % revenue based framework to ensure a fairer contribution framework which takes into account the financial position of operators. In this case, the enforcement power of the regulator will ensure timely recovery of dues.

- Sections 30 & 31 of the ICT Act presently suffer from several loopholes which is compromising the ability of the Authority when it comes to effective market regulation in particular. A review of the current framework is required for business facilitation purposes whereby a clearer demarcation would be established on clauses applicable to SMP and non-SMP operators, for example when it comes to tariff filing and tariff determination, wholesale and retail operations etc... In addition, transitional provisions should be specified to enable the Authority to regulate all markets/services until such time the SMP framework has fully been implemented. An Enforcement Framework which considers breaches of obligations pertaining to tariff & competition matters also needs to be addressed as part of the legislative review, whether by way of Penalties/Fines or otherwise. An additional sub-section under Section 30 may be required to formally capture anti-competitive behavior of SMP operators to provide more clarity to the industry as to the regulator's field of intervention. Section 24 on Licensing would also need to be updated to work more effectively with the requirements of Sections 30 & 31 in view of the above elements listed.

- Currently, the ICT Appeal Tribunal can only hear cases of appeals of ICTA's decision by operators. It is felt that as part of the new legislation, the ICT Appeal Tribunal will continue to exist but with a widened scope so that the newly merged institution may also seize the institution for redress. The mandate of the Tribunal will also have to be broadened to consider issues pertaining to content regulation

- From 1985 to 1993, ICANN delegated ccTLDs on a first-come, first-served basis. Using the notion of a "responsible person," ICANN required very limited basic administrative criteria before it could delegate a ccTLD to a trustee. It is on this same basis, that from early 1990s the .mu ccTLD, a national communication resource (just like the international country code +230 to identify Mauritius for telephone usage), is being technically managed by a private entity known as the ccTLD Manager. The current state of affairs is such that:-
    - On the one hand, the current .mu ccTLD policy, technical and commercial functions are run by the same private entity; and,
    - On the other hand, sections 12 & 13 of the ICT Act 2001, as amended, provide for the Internet Management Committee whose members are nominated by the Minister to administer the .mu ccTLD, instead of being designated on an elective, fair and transparent manner.
    - Both (i) and (ii) above are in breach of ccTLD international best practices as the said two ccTLD administration models are not representative of the local Internet Community of Mauritius who so far have had no say on the policy, technical and commercial functions components of the .mu ccTLD administration. There is presently

a need to request for re-delegation of the .mu ccTLD to be is filed with ICANN and the following prerequisite is required: -

- the current Internet Management Committee model (as per the ICT Act 2001) where the appointment of members is made by the Minister be changed to an elective membership model where members are elected and are representatives of the local Internet community which needs to be done by amending section 12 of the ICT Act and amending section 18 (1) (y) of the Act accordingly.

- Another topical issue is with respect to Over The Top services (OTT) such as Skype, Whatsapp, Viber and Facebook. The reach of these OTT applications and services that are accessible over the internet using operators' networks has steadily increased. While OTTs provide a range of benefits to consumers, primarily low/no-cost communications, operators and regulators have expressed concern in the way OTTs use the networks. Many international agencies are conducting studies to understand the market dynamics and policy and regulatory issues of OTT services, both in the context of their impact on traditional business models and of opportunities for innovation and stimulating economic growth. Outcomes of these studies will identify challenges faced by various stakeholder groups and possibly suggest resolutions. Same will need to be taken into consideration in this reform exercise.

4. Issues to be addressed for the IBA

The table below details some proposed amendments to the IBA legislative framework to improve broadcast regulation in a fast technological environment, to widen IBA's powers of sanction through fining and to better handled complaints.

No.	Problem Statement & Proposed Solution	Section to be amended (original text)	Proposed amendment
1	The definition of "broadcasting" should be updated to encompass delivery of content on multi platforms At the same time to harmonise the definition of "broadcasting" in the MBC Act, ICT Act and the IBA Act	**2. Interpretation** In this Act - "broadcast 'means emit sound or images by means of Hertzian waves, satellite or a wired electromagnetic system for the reception by the public – (a) otherwise than within a self-contained building; and (b) extending to or connecting at least 2 buildings;	"broadcasting" means any transmission of programme, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, extending to or connecting at least 2 buildings otherwise than within a self-contained building. **OR** Such other definition of "broadcasting" which is appropriate in the circumstances and "broadcast" is to be construed accordingly.

2.	The present IBA Act mention the defunct "Mauritius Telecommunications Authority" This should be deleted and replaced by the Information and Communications Technologies Authority.	**Section 2 Interpretation** "Mauritius Telecommunications Authority" has the same meaning as in the, Telecommunications Act 1998.	"ICTA" has the same meaning as in the Information and Communications Technologies Authority Act 2001
3	Today, we have interactive TV programmes where viewers can interact with the presenter by means of sms, graphics etc. It is necessary to define multimedia in the interpretation section.		"Multimedia" means the combination of multiple forms of media such as audio, video, text, graphics, fax, and telephony in the communication of information;
4.	New section 3 to be added Application of the Act before PART II		**3. Application of the Act** (1) Subject to subsection (2), this Act shall bind the State. (2) The Minister may on the recommendation of the Authority and on such terms and conditions as he thinks fit, exempt any Government department or statutory corporation from compliance with this Act in the interest of the sovereignty of the State, national security and public order.
5	The current IBA Act does not provide for fines and sanctions in case of breach of the license conditions, the Codes and the IBA Act. To add the imposition of sanctions and fines in section 4 - Objects of the Authority		Section 4 – Objects of the Authority impose sanctions and fines
6	Very often aggrieved persons or entity request a copy of a recording of a particular programme.		Section 4 – Objects of the Authority

	The Authority may provide such copies of recordings upon payment of an administrative fee The above should be form part of the objects of the Authority		Communicate copies of recordings to any person or entity against payment of a fee.
7	In line with new section 3 above.		Section 4 – Objects of the Authority To advise the Minister on all matters relating to broadcasting and on matters relating to the Authority generally
8	Section 5(2) of the IBA Act should be amended for enforcement purposes	**5. Powers of Authority** (2) The Authority may require the Corporation or any licensee to provide such information as it thinks necessary in relation to its broadcasting operations.	(2) The Authority may require the Corporation or any licensee to provide such information as it thinks necessary in relation to its broadcasting operations, including but not restricted to all data and information which are necessary for the Authority to attain its objectives and for monitoring purposes
9	New section 5(5) to be added in order to enhance the powers of the Authority		(5)The Authority shall have power to do such acts and doings as are incidental or conducive to the attainment of its objects.
10	IBA's powers are very limited and it encounters difficulties to request information relating to broadcasting operations from operators. Private commercial radios rely on data protection provisions in the Data Protection Act to withhold information relating to broadcast operations. It is proposed to enhance the powers of IBA so that it may apply to the Supreme Court for a Judge's Order.		(6) Notwithstanding any other enactment, the Authority shall have the right to apply on its own name, to the Supreme Court for an order to obtain any data or information withheld by any licensee which is necessary for it to attain its objectives.
11	Re-drafting of Section 5(4)(a) of the IBA Act for clarity and certainty.	(4) The Authority may (a) set up such committees as it thinks fit to assist in implementing this Act;	(4) The Authority may (a) set up such committees as it thinks fit to assist <u>it</u> in implementing this Act;
12	Re- drafting of Section 6 of the IBA Act for clarity and certainty. The "Authority" in fact relates to the "IBA Board"	**6. Constitution of Authority** The Authority shall consist of-	**6. Constitution of Authority** The Authority shall be administered and managed by the IBA Board which shall consist of-

13	Re- drafting of Section 8 (9) of the IBA Act for clarity and certainty	**8. Meetings of Authority** (9) Five members shall constitute a quorum at any meeting of the Authority	**8. Meetings of Authority** (9) Five members shall constitute a quorum at any meeting of the IBA Board
14	Re- drafting of Section 9 (2) of the IBA Act for clarity and certainty.	**9. Term of Office** (2) The appointment of a member under section 6(a) or (f)shall not be terminated except for a reason specified in section 37(3)(b)of the Interpretation and General Clauses Act. (2) The appointment of a member under section 6(a) or (f)shall not be terminated except for a reason specified in section 37(3)(b)of the Interpretation and General Clauses Act.	**9. Term of Office** (2) The appointment of a member under section 6(a) or (f)shall not be terminated except (a) for a reason specified in section 37(3)(b)of the Interpretation and General Clauses Act; (b) Is a shareholder or director or employee of a licensee; (c) Is an undischarged bankrupt or has made any arrangement with his creditors; (d) Is incapacitated by physical or mental illness which prevents him to attend board meetings;
15	Re- drafting of Section 11(!) of the IBA Act for clarity and certainty. The "Authority" in fact relates to the "IBA Board"	**11. Director** (1) The Authority shall appoint a Director on such terms and conditions as, it thinks fit.	**11. Director** (1) The Board of the Authority shall appoint a Director on such terms and conditions as, it thinks fit.
16	New paragraph (e) added to Section 11		**11. Director** (e) shall not be entitled to vote on any question before the Board although he may participate in its deliberations.
17	New subsection 5 to be added in Section 11		**11. Director** (5) The Director may with the approval of the Board, delegate any of the functions or powers delegated to him under this section to an officer of the Authority.
18	Amendment to section 13 (a) and (b) following the imposition of fines	**13. General Fund** The Authority shall establish a General Fund (a) into which shall be paid all the revenue of the Authority; and	**13. General Fund** The Authority shall establish a General Fund- (a) into which shall be paid all the revenues of and including the fines

		(b) out of which shall be paid all the expenses incurred by the Authority.	imposed by the Authority; and (b) out of which shall be paid all the expenses including the capital expenditure incurred by the Authority
19	Addition of a new paragraph (c) to section 14(1) following the imposition of fines and the current paragraph (c) should be restyled paragraph (d)		**14 Revenue and Expenditure** (1) The revenue of the Authority shall consist of – (c) fines imposed on operators
20	**Problem** Section 19(3)(h)(ii) of the IBA Act provides for 20 percent or more of the shares of which are owned or controlled, directly or indirectly, by a foreign national, company or body corporate. **Proposal** It is proposed to increase the figure of 20% to 50% for the following reasons: (1) to encourage foreign investment in the broadcast industry; and (2) to help in the creation of new jobs. It is also proposed to limit the shareholding for foreign nationals so that they do not become the majority partner.	**19. Application for license** (3) Subject to subsections (3A) and (3B), the Authority shall not grant a license where the applicant- (h) is a company or body corporate – (ii) 20 percent or more of the shares of which are owned or controlled, directly or indirectly, by a foreign national, company or body corporate; or (iii) 20 percent or more of the directors of which are foreign nationals; or	**19. Application for license** (3) Subject to subsections (3A) and (3B), the Authority shall not grant a license where the applicant- (h) is a company or body corporate – (ii) 50 percent or more of the shares of which are owned or controlled, directly or indirectly, by a foreign national, company or body corporate; or (iii) 50 percent or more of the directors of which are foreign nationals; or
21	Re-drafting of Section 23(4) for clarity and certainty.	**23. Transfer and surrender of license** (4) No person shall assign, sell, transfer or otherwise dispose of, any interest or share in a licensed company unless he has given one month's prior notice to the Authority of his intention to do so	**23. Transfer and surrender of license** (4) No person shall assign, sell, transfer or otherwise dispose of, any interest or share in a licensed company unless he has given one month's prior notice to the Authority of his intention to do so and the Authority has approved same.
22	New Section 26 – Fines		**26. Fines** (a) The Authority shall have the right to impose fines up to Rs 1,000,000 for any breach

	Other sections which follow should be renumbered accordingly.		of the Act, the Code of Conduct, Code of ethics, Code of advertising practice or license conditions. (b) Decision not suspended pending appeal/review No decision of the Board shall have the effect of being suspended pending the appeal to the appropriate jurisdiction. (c) The operators shall have the right to appeal within 21 days under this section against any decision to the Supreme Court. **(d)** Notwithstanding an appeal under this section, any fines imposed shall be paid into a debtors' account held by the IBA before exercising the right to appeal.
23	The Complaints Committee, which is the adjudicative arm of IBA, is an independent body with limited jurisdiction. It is proposed to enhance the jurisdiction of the IBA Act so that Authority can *proprio motu*, refer potential breaches by operators to the Complaints Committee.	**30. Complaints Committee** (4) Subject to subsections (5) and (6), the Complaints Committee shall consider and adjudicate on any complaint of (a) failure or likelihood of failure to comply with the code of ethics specified in section 29(4) or the code of advertising practice specified in section 29(5); (b) unjust or unfair treatment or likelihood of unjust of unfair treatment in a broadcast programme; (c) unwarranted infringement or likelihood of unwarranted infringement of privacy in, or in connection with, the obtaining of material included in a broadcast programme.	To add after paragraph 4(c), the following two paragraphs (d) a breach of the Code of Conduct for Broadcasting services as set out in the Second Schedule (e) a breach of the license conditions

24	**Problem** The quorum for the Complaints Committee has not been defined. **Proposal** It is proposed to add a new section to define the quorum for the Complaints Committee	**30. Complaints Committee**	**30. Complaints Committee** By adding a new section (3A) after section 3 as follows: (3A) The Chairperson, together with any other two members of the Complaints Committee, shall constitute the quorum for any scheduled hearing and all such subsequent hearings adjourned, shall continue with the same quorum and the same Chair and members.
25		**30. Complaints Committee** (5) No complaint shall be considered unless it – (a) is made in writing by a person who identifies himself (b) emanates, in the case of a complaint under subsection (4)(b) or (c), from the person affected or his duly authorised agent;	In Subsection (5) – (A) in paragraph (a), by deleting the words "identifies himself" and replacing them by the words "or entity which identifies himself or itself, as the case may be"; (B) After paragraph (b), to add a new paragraph (c) (c) "or is made by *Authority proprio motu*";
26		**30. Complaints Committee** (7) When considering a complaint under subsection (4), the Complaints Committee shall afford a hearing to every interested person.	**30. Complaints Committee** (7) When considering a complaint under subsection (4), the Complaints Committee may afford a hearing to every interested person who has expressed the view to be heard in person. The Complaints Committee shall be free to adjudicate on the complaints and reply, if any, on paper
27		**30. Complaints Committee** (8) A hearing may, at the discretion of the Complaints Committee, be held in private.	**30. Complaints Committee** (8) A hearing may, at the discretion of the Chairman of the Complaints Committee, be held in private.
28		**30. Complaints Committee**	**30. Complaints Committee**

		(10) The Complaints Committee shall, after considering a complaint under subsection (4), forward a copy of its decision to the Authority	(10) The Complaints Committee shall, after considering a complaint under subsection (4), forward a copy of its findings to the Authority
29		**30. Complaints Committee** (11) The Complaints Committee may recommend to the Authority to issue a direction under section 5(l).	**30. Complaints Committee** (11)The Complaints Committee may recommend to the Authority to issue a direction under section 5(l). The Authority shall be free to impose any sanction it may think fit in the circumstances including fines.
30		**30. Complaints Committee** (12) A direction under section 5(1) may require the Corporation or a licensee to publish, in such manner as the Authority thinks fit, a summary of the complaint and of the Standards Committee's decision.	**30. Complaints Committee** (12) A direction under section 5(1) may require the operator to publish, in such manner as the Authority thinks fit, the Complaints Committee's findings
31		**32. Conflict of Interest** (1) Where – (a) … (b) ….; (c) …..; or (d) …… has a pecuniary or other material interest in a matter to be determined by the Authority, the Standards Committee, as the case may be, the Committee of the Complaints at person shall, at or before the meeting at which the matter is to be considered, disclose the interest and not take part in the determination.	**32. Conflict of Interest** (1) Where – (a) … (b) ….; (c) …..; or (d) …… has a pecuniary or other material interest in a matter to be determined by the Authority, the Standards Committee, the Complaints Committee as the case may be, the person shall, at or before the meeting at which the matter is to be considered, disclose the interest and not take part in the determination
32		**First Schedule Part II** **1. Public Television Broadcasting License** To establish and operate a private television broadcasting service in the VHF/UHF Television frequency band on those	**First Schedule Part II** **1. Public Television Broadcasting License** To establish and operate a public television broadcasting service in the VHF/UHF Television frequency band on those frequencies allocated to the

		frequencies allocated to the Corporation and in terms of the Mauritius Broadcasting Corporation Act	Corporation and in terms of the Mauritius Broadcasting Corporation Act

5. Optimisation of the solutions for the problems identified separately by the ICTA and the IBA in the merger exercise

From sections 3 & 4 above, it can be observed that the nature of the issues raised is very diverse. There are some issues that can be addressed jointly. For example, the possibility of providing common frameworks for licensing (unified licensing framework), enforcements powers, competition and unified online/broadcast content regulation regime can be explored. On the other hand, issues such as cybersecurity, frequency spectrum management and shareholding requirements for private TV operator are issues which need to be addressed from the perspective of either the ICT infrastructure regulator or the ICT content regulator as sector specialists. In order to do so in an exhaustive manner, the proposed merged ICTA/IBA entity will need to be a statutory body and its effectiveness and functions will be determined by what is given to it by law to perform. Given the converging environment, changing technological and industrial landscape and market dynamics, as well as the regulatory experiences accumulated over the years, the approach to move forward is to prepare and enact a comprehensive Bill that encompasses all the necessary provisions for the effective regulation of the evolving communications and broadcasting sectors and empowers the proposed merged entity to enforce such a statute.

In view of the diverse range of issues identified above and which need to be tackled in a very profound and practical manner, the Committee proposes to enlist consultancy services from international agencies with hands-on experience, which have been involved in similar merger exercises in different countries by taking into account the specificities and requirements of the local context identified in this report in order to come up with the required merger Bill as well as the required organisational merged structure.

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