



# **LAWS OF MALAYSIA**

**Act 741**

**POSTAL SERVICES ACT 2012**

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# LAWS OF MALAYSIA

## Act 741

### POSTAL SERVICES ACT 2012

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**LAWS OF MALAYSIA****Act 741****POSTAL SERVICES ACT 2012**

An Act to provide for the licensing of postal services and the regulation of the postal services industry, and for incidental or connected matters.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**PART I****PRELIMINARY****Short title and commencement**

1. (1) This Act may be cited as the Postal Services Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

**Interpretation**

2. In this Act, unless the context otherwise requires—

“this Act” includes any subsidiary legislation made under this Act;

“postal article” means a letter, a package, a parcel, a wrapper or a container that can be collected, transmitted and delivered through the postal network of a licensee;

“postage” means the charge or fee, including additional charge or fee, payable for the collection, transmission and delivery of a postal article by a licensee;

“downstream access” means the access to a licensee’s postal network and postal network facilities for final processing and delivery purposes by another licensee;

“register” means any register maintained by the Commission for the purpose of this Act;

“prescribed” where no mode is mentioned, means prescribed by regulations made under this Act;

“postal services industry” includes postal services and other services that may be provided under this Act;

“mail bag” means any bag, box, basket, parcel, envelope or container, including locked bag, in which a postal article is transmitted, whether it does or does not contain any postal article;

“postal network facilities” means any facilities and equipment used by a licensee as part of its postal network and in the case of a universal service licensee includes a post office, posting box, relay box and postal vehicle;

“licence” means a universal service licence or non-universal service licence granted under subsection 13(2);

“Minister” means the Minister charged with the responsibility for the postal services industry;

“authorized officer” means—

(a) any public officer or officer of the Commission authorized in writing by the Minister for the purpose of this Act;  
or

(b) any police officer not below the rank of Inspector;

“post office” includes any place, device or mail conveyance authorized by the universal service licensee for the posting, receipt, sorting, handling, transmission or delivery of postal article;

“licensee” means a company incorporated under the Companies Act 1965 [*Act 125*] that has been granted a licence under this Act to provide postal services;

“mail conveyance” means the mode used to transmit postal articles;

“director” has the same meaning assigned to it in the Companies Act 1965;

“postal identifier” means any name, logo, mark or design assigned by the Commission to a licensee—

(a) that identifies the licensee; and

(b) that clearly indicates to the public that postal articles have been, or are intended to be accepted by that licensee for transmission by post;

“Designated Postal Operator” means a universal service licensee designated by the Minister;

“consumer” means a person who uses the postal network of a licensee either as a sender or recipient of postal articles or who uses the postal financial services or electronic postal services;

“transmission of postal article” means the process whereby a postal article is being posted by the sender to an access point until it is being delivered to the addressee by the licensee or it is returned to the sender or disposed of under this Act by the licensee;

“data processing device” means any equipment or device from which information is capable of being reproduced, with or without the aid of any other equipment or device;

“mail pick up or delivery equipment” means equipment provided by the universal service licensee for the collection and delivery of mail, including a posting box, parcel box and relay box;

“non-universal service” means postal services that may be provided to consumers at rates other than the prescribed rates of the universal service;

“electronic postal services” means the electronic postal services as specified in section 35;

“postal financial services” means the postal financial services as specified in section 34;

“postal services” means the collection, transmission and delivery of any postal article;

“universal service” means postal services, which include basic postal services determined by the Commission to be provided to consumers throughout Malaysia, at the prescribed rates;

“posting box” means any box or receptacle designated by a universal service licensee, in which senders can deposit postal articles for the purpose of collection;

“letter box” means a receptacle provided by a consumer in order to receive postal article sent to the consumer or to the consumer’s address;

“post” means an act of leaving a postal article in any place, receptacle, device or mail conveyance of a licensee or with any person authorized by a licensee for the collection of postal article and in the case of the universal service licensee, also means leaving it in any post office or depositing it in any posting box;

“postal network” means the system of organization and resources in any form or manner used by a licensee in carrying out its operations including the aspects of the system used for—

- (a) collecting postal articles from the access points;
- (b) handling and transporting postal articles from the access points to the distribution centre;
- (c) processing the postal articles; and
- (d) distributing the postal articles to the addressee;

“postage stamp” means any label or stamp which denotes any rate of postage fee or other sum payable in respect of a postal article, and includes adhesive postage stamp and stamp printed, embossed, impressed or otherwise indicated on any envelope, wrapper, postcard or other article, whether such stamp is issued under this Act or under the law of any other country;

“letter” means any form of written communication or document of communication in an envelope or a small packet that is directed to a specific person or a specific address which is conveyed other than by electronic means, and excludes categories which are specified under section 12;

“Commission” means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998 [Act 589];

“appointed date” means the date on which this Act comes into operation;

“complaint handling procedure” means the published document referred to in subsection 51(1);

“access points” means the points of the postal network of a licensee to which the sender has access through any means, and in the case of the universal service licensee includes post offices and posting boxes;

“general terms and conditions” means the general terms and conditions of a licensee referred to in section 32.

## **Delivery**

**3.** For the purpose of this Act, “delivery” by a licensee of a postal article means—

- (a) leaving the postal article at the address;
- (b) depositing the postal article in a post office locked bag or letter box or any other receptacle or device provided for the receipt of postal article of the addressee; or

- (c) leaving the postal article with the addressee or his servant or agent or with any other person considered to be authorized by the addressee to receive the postal article, according to the usual manner of delivering postal article to that addressee, and where the addressee is a guest or a resident at a hotel, delivery to the proprietor or manager of the hotel or his agent shall be deemed to be delivery to the addressee.

## PART II

### FUNCTIONS OF THE COMMISSION

#### **Functions of the Commission**

4. (1) The Commission shall have the following functions:
- (a) to advise the Minister on all matters relating to postal services, including matters in connection with the exercise of its functions under this Act;
  - (b) to implement and promote the national policy objectives for the postal services industry;
  - (c) to implement and enforce the provisions of this Act and to recommend reforms;
  - (d) to promote and encourage the expansion of the postal services industry according to the economic development of Malaysia;
  - (e) to exercise regulatory functions in respect of the postal services provided by the licensees, including postage rates that have been established, the determination of performance standards and standards of facilities and the enforcement of standards;
  - (f) to monitor the compliance by the licensees with the stipulated service standards, contractual obligations and relevant laws and guidelines;
  - (g) to develop, control, implement, maintain and manage the postcode and addressing system in Malaysia;
  - (h) to promote competition in providing for postal services;

- (i) to safeguard the interests of consumers of postal services supplied by licensees in respect of—
  - (i) the prices to be charged;
  - (ii) the continuity of postal services; and
  - (iii) the quality of the postal services provided;
- (j) to use its best endeavour in facilitating all reasonable demands relating to postal services;
- (k) to increase concerted efforts towards improving the operational efficiency of the postal services industry;
- (l) to regulate the issuance of postage stamps including definitive, commemorative and special issues of postage stamps and any other philatelic items; and
- (m) to carry on all other activities as may appear to the Commission requisite, advantageous or convenient for the purpose of carrying out or in connection with the performance of its functions under this Act.

(2) The Commission may authorize the Chairman of the Commission or any authorized officer to carry out any of the functions set out in subsection (1).

### **Ensuring the provision of universal service**

**5.** (1) The Commission shall exercise its functions to ensure the provision of universal service to all consumers within Malaysia in accordance with the following principles:

- (a) the scope of universal service shall be clearly established and defined;
- (b) the universal service shall be available to all persons in Malaysia except in such geographical conditions or other circumstances as determined by the Minister;
- (c) the universal service shall be accessible with sufficient access points to meet the needs of all consumers;
- (d) the universal service shall be available to all consumers under transparent, objective and non-discriminatory terms and conditions;

- (e) the security and confidentiality of postal articles shall be maintained;
- (f) the universal service shall be offered on a permanent basis without interruption except in cases of *force majeure*;
- (g) the universal service shall be provided at reasonable quality standards; and
- (h) the universal service shall be provided at affordable rates throughout Malaysia.

(2) In ensuring the proper provision of the universal service, the Minister may, on the recommendation of the Commission, make regulations on any matters relating to universal service for the purpose of subsection (1).

### **Monitoring and reporting to the Minister**

**6.** (1) The Commission shall monitor all significant matters relating to the performance of licensees and report to the Minister at the end of each financial year of the Commission.

(2) The Commission shall monitor and report on the following matters:

- (a) the administration and enforcement of this Act;
- (b) the state of the competitive environment;
- (c) the quality of universal service provided to all consumers throughout Malaysia;
- (d) the efficiency and quality of the provision of postal services by licensees;
- (e) the rates paid by consumers for postal services;
- (f) any deficiency in the scope or operation of this Act; and
- (g) other matters as the Minister deems necessary.

(3) The Commission shall publish the report in the manner it deems appropriate, as soon as practicable following the date on which the Commission conveys the report to the Minister.



PART III

MINISTERIAL POWERS AND PROCEDURES

**Direction by the Minister**

7. (1) The Minister may, from time to time, issue directions to the Commission on the exercise of the Commission's powers and the performance of the Commission's functions under this Act, whether of a general character or otherwise.

(2) A direction issued under subsection (1) shall be consistent with the provisions of this Act which are relevant to the particular matter or activity.

(3) The Commission shall exercise its powers conferred under this Act in a manner which is consistent with such direction.

(4) Every direction shall be registered by the Commission as soon as practicable.

(5) The direction shall come into operation on the date of registration or such later date as the Minister may specify in the direction.

(6) The direction shall expire on such date as the Minister may specify in the direction or, if no date is specified, the direction shall be in operation until the direction is revoked.

**Variation of a direction**

8. (1) The Minister may at any time modify, vary or revoke a direction.

(2) The procedures set out in subsections 7(4), (5) and (6) shall apply in respect of any modification, variation or revocation of a direction.

**Register of directions**

9. The Commission shall maintain a register of all directions including any modification, variation or revocation of a direction issued by the Minister in accordance with subsection 99(1).

## PART IV

## LICENSING PROVISION

**Minister may grant licence**

**10.** The Minister shall have power to grant—

- (a) a universal service licence; or
- (b) a non-universal service licence,

for the provision of postal services on such terms and conditions as he thinks fit and in accordance with this Act.

**Application for licence**

**11.** (1) An applicant for a licence under this section shall submit a written application to the Commission.

(2) The Commission may, at any time after the application for a licence is made, request the applicant to give to the Commission, within the period specified in the request, further information or document.

(3) If any additional information or document required under subsection (2) is not provided by the applicant within the period specified in the request or any extension of time granted by the Commission, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.

(4) An application under this section may be withdrawn at any time before it is approved or refused.

(5) A person who provides postal services without a valid licence granted under section 10 commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

### **Non-application**

**12.** (1) The licensing requirement under this Act shall not apply to the categories specified in the First Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the First Schedule to include an additional category or delete an existing category as he thinks fit.

### **Grant or refusal of licence**

**13.** (1) The Commission shall, within sixty days from—

- (a) the receipt of an application under subsection 11(1); or
- (b) the receipt of further information or document requested by the Commission under subsection 11(2),

submit a written recommendation to the Minister.

(2) The Minister may, after considering the recommendation of the Commission, grant or refuse to grant the licence.

(3) If the Minister grants the licence under subsection (2), he may impose any conditions as he thinks fit.

(4) The decision of the Minister to grant or refuse to grant the licence shall be communicated to the applicant by the Commission by written notice as soon as practicable.

### **Conditions of licence**

**14.** (1) A licensee shall comply with—

- (a) the prescribed standard conditions of the licence; and
- (b) any conditions imposed by the Minister under subsection 13(3).

(2) A licensee who fails to comply with any condition of a licence under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Power to add, vary or revoke conditions of licence**

**15.** (1) The Minister may, on the recommendation of the Commission, at any time impose any additional condition or vary or revoke any existing condition of a licence.

(2) Before the Minister makes a decision under subsection (1), the Commission shall give the licensee—

(a) a written notice of the Minister's intention together with a draft copy of the imposition, variation or revocation; and

(b) an opportunity to make written submission within the period specified in the written notice which shall not be less than thirty days.

(3) After the expiry of the period specified in the notice, the Minister shall, after considering any written submission made by the licensee and having due regard to any recommendation of the Commission, decide whether to impose the additional condition or to vary or revoke any existing condition or to take no further action.

(4) The Commission shall give to the licensee written notice of the Minister's decision under subsection (3) as soon as practicable and the decision shall take effect on a date to be specified in the written notice.

**Assignment or transfer of licence**

**16.** (1) The licence shall not be assigned or transferred to any other person except with the prior written approval of the Minister.

(2) A licensee who assigns or transfers its licence to any other person without the prior written approval of the Minister commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

### **Suspension or revocation of licence**

**17.** (1) The Minister may, upon the recommendation of the Commission, suspend or revoke a licence under any of the following circumstances:

- (a) the licensee has failed to comply with any of the provisions of this Act;
- (b) the licensee has failed to comply with any of the conditions of the licence;
- (c) the licensee has been convicted of an offence under this Act;
- (d) a receiver, receiver and manager, provisional liquidator or like official has been appointed over the whole or substantial part of the licensee's assets and such appointment is not revoked or annulled within a period of sixty days from the date of such appointment; or
- (e) there has been any act or default on the part of the licensee or there has been a change of circumstances such that the licensee would no longer be entitled to be granted a licence under this Act.

(2) Before the Minister makes a decision under subsection (1), the Commission shall give the licensee—

- (a) a written notice of the Minister's intention to suspend or revoke the licence; and
- (b) an opportunity to make written submissions within a period specified in the written notice which shall not be less than thirty days.

(3) After the expiry of the period specified in the notice, the Minister shall, after considering any written submission made by the licensee and having due regard to any recommendation of the Commission, decide whether or not to suspend or revoke the licence.

(4) The Commission shall give the licensee written notice of the Minister's decision under subsection (3) as soon as practicable.

(5) The licensee shall not be entitled to any form of compensation from the Minister or the Commission if the licence is suspended or revoked under subsection (1).

**Effective date of suspension or revocation of licence**

**18.** The suspension or revocation of a licence under section 17 shall take effect on—

- (a) a date specified by the Minister in the written notice given under subsection 17(4); or
- (b) if no date is specified in the written notice given under subsection 17(4), on the expiry of thirty days from the date on which the notice is served on the licensee.

**Publication of suspension or revocation of licence**

**19.** (1) Where the suspension or revocation of a licence has taken effect, the Commission shall, as soon as practicable, cause the suspension or revocation to be published in at least one national language and one English language national daily newspaper for at least three consecutive days.

(2) Any delay or failure to publish the notice of suspension or revocation shall not in any manner affect the validity of the suspension or revocation.

(3) The Minister and the Commission shall not be liable for any action, loss or damage arising from or occasioned by the publication of the notice referred to in subsection (1).

**Surrender of licence**

**20.** (1) A licensee may, by written notice, surrender his licence to the Commission in accordance with the requirements set out in the licence.

(2) Notwithstanding subsection (1), a universal service licensee shall, not later than five years from the date of the intended surrender, give written notice to the Commission.

(3) The surrender shall take effect on the date the Commission receives the licence and the notice under subsection (1), or where a later date is specified in the notice, on that date.

(4) The surrender of a licence shall be irrevocable unless it is expressed to take effect on a later date and before that date the Commission, by notice in writing to the licensee, allows the surrender to be withdrawn.

### **Renewal of licence**

**21.** (1) A licensee may apply for the renewal of a licence not later than six months before its expiry.

(2) The Minister may, on the recommendation of the Commission, upon payment of the prescribed fee, renew an existing licence except in the following circumstances:

- (a) the licensee has failed to comply with any of the provisions of this Act;
- (b) the licensee has failed to comply with any of the conditions of the licence;
- (c) the licensee had improperly or illegally obtained the licence;
- (d) the licensee has been convicted of an offence under this Act;
- (e) a receiver, receiver and manager, provisional liquidator or like official has been appointed over the whole or substantial part of the licensee's assets and such appointment is not revoked or annulled within a period of sixty days from the date of such appointment; or
- (f) there has been any act or default on the part of the licensee or there has been a change of circumstances such that the licensee would no longer be entitled to be granted a licence under this Act.

(3) The Commission may request the licensee to provide any information or document as may be required for the renewal application within the period specified in the request.

(4) Notwithstanding subsection (2), if the information or document requested under subsection (3) is not provided by the licensee within the period specified in the request or any extension of time granted by the Commission, the Minister may not renew the licence.

(5) If the Minister refuses to renew the licence, the Commission shall inform the licensee by written notice as soon as practicable of the Minister's refusal to renew the licence.

(6) The Commission shall give the licensee an opportunity to make written submission to the Minister within the period specified in the written notice which shall not be less than fourteen days.

(7) After the expiry of the period specified in the notice under subsection (6), the Minister shall, after considering any written submission made by the licensee and having due regard to any recommendation of the Commission, decide whether or not to renew the licence.

(8) If the Minister decides not to renew the licence, the Commission shall notify the licensee as soon as practicable of the Minister's decision and shall publish the decision in at least one national language and one English language national daily newspaper for at least three consecutive days.

(9) Any delay or failure to publish the notice under subsection (8) shall not in any manner affect the validity of the Minister's decision not to renew the licence.

(10) The Minister and the Commission shall not be liable for any action, loss or damage arising from or occasioned by the publication of the notice referred to in subsection (8).

### **Effect of revocation, surrender or non-renewal of licence**

**22.** (1) If the suspension or revocation of a licence under section 17 or a surrender of a licence under section 20 has taken effect or where the licence has not been renewed under section 21, the licensee shall immediately cease to provide any facility or service in respect of which the licence was granted.

(2) Notwithstanding subsection (1), the Minister may authorize the licensee in writing to carry on providing any facility or service for such duration and upon such terms and conditions as the Minister may specify in the authorization for the purpose of winding up the licensee's affairs.



(3) Subject to subsection (2), a person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

### **Notice of intention to suspend operation**

**23.** A licensee shall notify the Commission, in writing, of any intention to suspend operation in the manner as prescribed by the Minister.

## **PART V**

### **PROVISIONS RELATING TO THE UNIVERSAL SERVICE LICENSEE**

#### **Universal service licensee trade names**

**24.** (1) The Commission shall have control of the use of the words specified in the Second Schedule as a trade name.

(2) The Commission may grant permission in writing to a universal service licensee or its agent to use the words specified in the Second Schedule as a trade name without any charge.

(3) The Commission may, by order published in the *Gazette*, amend the Second Schedule to include an additional word or delete an existing word as trade names.

#### **Passing off of names of a universal service licensee**

**25.** (1) A person, other than the persons specified in subsection 24(2), shall not place or permit, or cause to be placed or to maintain, on any premises, vehicle or other place or thing, belonging to him or under his control, any words specified in the Second Schedule.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

**Production or issuance of postage stamp**

**26.** (1) A universal service licensee shall have the right to produce or issue postage stamps bearing the word “Malaysia” in any language, or any national symbol or emblem of Malaysia.

(2) The categories of postage stamps produced or issued by the universal service licensee under subsection (1) shall include definitive, commemorative, special or any other category as prescribed by the Minister.

**Right to sell postage stamp**

**27.** (1) A universal service licensee and persons authorized by a universal service licensee in writing may sell postage stamps.

(2) A universal service licensee and persons authorized by a universal service licensee shall not sell postage stamps for more than the value denoted except for philatelic purposes.

(3) Notwithstanding subsection (2), the sale of postage stamps bearing a cancellation mark for philatelic purposes is not restricted.

(4) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

**Annual thematic plan**

**28.** (1) A universal service licensee shall submit to the Commission for approval before 1 July of each year an annual thematic plan on the production and issuance of commemorative and special postage stamps for the following year.

(2) The Commission shall, within sixty days of receiving the plan under subsection (1), approve the plan with or without amendments.

**Archiving of postage stamp**

**29.** A universal service licensee shall archive specimens of each production of postage stamps in a safe and proper manner for philatelic purposes, which shall include printed sheets, printing plates and other artifacts used in connection with the production of postage stamps.

**Installation of posting box or other collection or delivery equipment**

**30.** (1) A universal service licensee may, for the purpose of providing adequate access points, install any posting box or mail pick up or delivery equipment, stamp vending machine and other similar automatic device in any place to which the public have access.

(2) A universal service licensee before installing any access point shall obtain the approval of the State Authority, local authority or other relevant authority where required to do so.

**Exemption from liability for loss, misdelivery, delay or damage**

**31.** A universal service licensee shall not be liable for any loss, misdelivery, delay of or damage to the postal articles during the transmission of postal articles, unless it is proven that the universal service licensee has maliciously or negligently or intentionally cause the loss, misdelivery, delay or damage.

PART VI

GENERAL TERMS AND CONDITIONS OF POSTAL SERVICES

**Submission of general terms and conditions**

**32.** (1) An applicant, after submitting the application for a licence, shall develop and submit the general terms and conditions, including the complaint handling procedures referred to in section 51 as its standing offer to provide postal services to consumers.

(2) If the Commission requests the applicant to submit the general terms and conditions or any aspect of the general terms and conditions to the Commission in electronic form, the applicant shall do so in a format that is acceptable to the Commission.

(3) In the case of a universal service licensee, the general terms and conditions shall be approved by the Commission.

(4) The Commission shall have the right to publish the general terms and conditions or any aspect of the general terms and conditions and to make available copies of the same to third parties.

### **Limitation of liability in universal service licensee's general terms and conditions**

**33.** (1) The general terms and conditions of a universal service licensee shall contain limitation from liability provisions setting out limits as to the maximum indemnities payable for loss of or damage to postal articles as approved by the Commission under section 32.

(2) Any limitation from liability contained in the general terms and conditions shall be a defence against any prosecution, action or proceedings of any nature, whether in court or otherwise, taken against the universal service licensee and shall effectively limit the liability of the universal service licensee to that extent.

(3) Notwithstanding subsection (2), if a universal service licensee has agreed contractually with another party on the limitation of liability provisions, that contractual terms and conditions shall prevail.

## PART VII

### OTHER SERVICES

#### **Postal financial services**

**34.** (1) A universal service licensee may carry on postal financial services activities and may act as a payment and collection agent for any third party on a commercial basis.

(2) The Minister may, by rules published in the *Gazette*, prescribe the scope of and fee for postal financial services.

(3) For the purpose of this Act, “postal financial services” means a range of postal financial services to be provided by a universal service licensee including money order, postal order, postal draft, postal cheque and postal travellers’ cheque.

### **Electronic postal services**

**35.** (1) A universal service licensee may provide electronic postal services to enable an electronic message to be conveyed from the sender to the recipient by way of electronic means.

(2) The Minister may, by rules published in the *Gazette*, prescribe the scope of and fee for electronic postal services.

(3) The Commission may publish guidelines on matters relating to electronic postal services.

## PART VIII

### REGULATION OF RATES

#### **Principles on rates setting**

**36.** The postage rates set by the licensee shall be based on the following principles:

- (a) that rates be reasonably fair and not discriminatory;
- (b) that rates be oriented towards costs and not contain discounts that unreasonably prejudice the competitive opportunities of other licensees;
- (c) that rates be structured and levels set to attract investment into the postal services industry; and
- (d) that rates take into account the standard of rates as recommended by international organizations of which Malaysia is a member relating to postal services.

**Rates may be regulated**

**37.** (1) Notwithstanding section 36, the Minister may, on the recommendation of the Commission, prescribe—

- (a) the postage rates to be charged by the licensees for services which are within the definition of universal service or non-universal service and may specify the minimum or maximum rates that may be charged or the actual rates that shall be charged; and
- (b) the publication or disclosure of rates and rate increases for postal services.

(2) The regulations made under subsection (1) on the rates which the universal service licensees may charge for postal services, may include—

- (a) a defined area of the universal service, on the principle that the rates shall be uniform throughout Malaysia; and
- (b) the remainder of the universal service on which the rates may vary for different geographic zones, or for delivery between different geographic zones, to reflect the differences in costs incurred by a universal service licensee depending on the geographic zone or zones.

(3) The Minister may, by order published in the *Gazette*, exempt any person from the payment of any rates in relation to postal services on such terms and conditions as he thinks fit.

**PART IX****GENERAL COMPETITION PRACTICES****Prohibition on anti-competitive conduct**

**38.** (1) Subject to section 45, a licensee shall not engage in any conduct which has the purpose of substantially lessening competition in the postal market.

(2) A licensee who contravenes subsection (1) commits an offence.

**The Commission may publish guidelines**

**39.** (1) The Commission may publish guidelines which clarify the meaning of “substantially lessening of competition”.

(2) The guidelines may include reference to—

- (a) the need to balance between the promotion of competition and the provision of quality services throughout Malaysia;
- (b) the postal market;
- (c) global trends in the postal market;
- (d) the impact of the conduct of the licensee on the number of competitors in the postal market and their market shares;
- (e) the impact of the conduct of the licensee on barriers to entry into the postal market;
- (f) the impact of the conduct of the licensee on the range of services in the postal market;
- (g) the impact of the conduct of the licensee on the costs and profit structures in the postal market; and
- (h) any other matters which the Commission is satisfied are relevant.

**Prohibition on entering into collusive agreements**

**40.** (1) A licensee shall not enter into any understanding, agreement or arrangement, whether legally enforceable or not, which provides for—

- (a) rate fixing;
- (b) market sharing; or
- (c) boycott of another competitor.

(2) A licensee who contravenes subsection (1) commits an offence.

**Prohibition on tying or linking arrangements**

**41.** (1) A licensee shall not, at any time or in any circumstances, make it a condition for the provision or supply of a product or service in the postal market that the person acquiring such product or service in the postal market is also required to acquire or not to acquire any other product or service either from himself or from another person.

(2) A licensee who contravenes subsection (1) commits an offence.

**Dominant licensee**

**42.** The Commission may determine that a licensee is in a dominant position in the postal market.

**Guidelines as to the meaning of “dominant position”**

**43.** (1) The Commission may publish guidelines which clarify how it will apply the test of “dominant position” to a licensee.

(2) The guidelines may specify the matters which the Commission may take into account, including—

- (a) the promotion of competition against the provision of quality services throughout Malaysia;
- (b) the postal market;
- (c) global technology and commercial trends affecting market power;
- (d) the market share of the licensee;
- (e) the power to make independent rate setting decisions by the licensee;
- (f) the degree of product or service differentiation and sales promotion in the postal market; and
- (g) any other matters which the Commission is satisfied are relevant.



**The Commission may direct a licensee in a dominant position**

**44.** The Commission may direct a licensee in a dominant position in the postal market to cease conduct in that postal market which has, or may have, the effect of substantially lessening competition in any postal market, and to implement appropriate remedies.

**Authorization of a conduct**

**45.** (1) A licensee may apply to the Commission, prior to engaging in any conduct which may be construed to have the purpose or the effect of substantially lessening competition in a postal market, for authorization of the conduct.

(2) Notwithstanding the provisions of this Part, the Commission shall authorize the conduct if the Commission is satisfied that the authorization is in the national interest.

(3) Before authorizing the conduct, the Commission may require the licensee to submit an undertaking regarding its conduct in any matter relevant to the authorization.

(4) If the licensee subsequently withdraws the undertaking, the authorization shall be deemed never to have been given for the purpose of this Part.

(5) A licensee may withdraw an application made under subsection (1) at any time.

**Register of authorizations**

**46.** The Commission shall maintain a register of current authorizations of a conduct under this Part pursuant to subsection 99(1).

**Penalty for offence**

**47.** A person who commits an offence, under this Part shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

**Minister may make regulations**

**48.** (1) Subject to subsection (2), the Minister may make regulations in respect of agreements between licensees and foreign postal service providers.

(2) The Minister shall only make regulations which are intended to prevent or mitigate—

- (a) any conduct by foreign service providers which will, or is likely to lead to, a substantial lessening of competition in the postal market; or
- (b) the misuse of market power in the postal market.

**PART X****CONSUMER PROTECTION****Postal Forum**

**49.** (1) The Commission may designate a body to be known as the “Postal Forum” for the purpose of this Act by notifying that body in writing if the Commission is satisfied that—

- (a) the membership of the body is open to all persons;
- (b) the body is capable of performing as required under the relevant provisions of this Act; and
- (c) the body has a written constitution.

(2) The body shall agree in writing to be the Postal Forum before the designation may be registered.

(3) The Commission may decide that an existing body that was previously designated as the Postal Forum is no longer an appropriate body for the purpose of this Act if the Commission is satisfied that the body no longer meets the requirements set out in subsection (1).

(4) A designation or withdrawal of designation under this section shall take effect from the date of registration, or a later date as specified by the Commission.

## **Functions of the Postal Forum**

- 50.** (1) The Postal Forum shall have the following functions:
- (a) to give feedback and make recommendations to the Commission on any matters concerning the interest of consumers of the postal services industry;
  - (b) to represent the interests of consumers of the postal services industry including complaints handling;
  - (c) to promote consumers' interest in relation to the tariffs and standards of postal services industry;
  - (d) to identify and keep under review matters affecting the interests of consumers and ensure that the licensees are aware of, and responsive to, concerns about their services;
  - (e) to publicise the existence, functions and work of the Postal Forum in protecting the interests of consumers;
  - (f) to develop a code of practice for postal services; and
  - (g) to carry out any functions as may be determined by the Commission.

(2) The Commission shall have due regard to the recommendations of the Postal Forum in the exercise of its powers and the performance of its functions under this Act.

## **Complaints handling procedures**

**51.** (1) The complaints handling procedures shall be in the form of a published document and shall form part of a licensee's general terms and conditions.

(2) The document specified in subsection (1) shall outline the procedures to be followed for consumers who have complaints against the licensee.

(3) The complaint handling procedures shall be based on the following principles:

- (a) providing adequate resources with sufficient delegated authority to ensure complaints received are acted upon and concluded in a timely manner;

- (b) ensuring the complaint process is available and accessible by all;
- (c) treating complainants with courtesy and wherever possible resolve complaints at the first point of contact;
- (d) providing assistance for complainants in the formulation and lodgment of complaints;
- (e) providing complaints handling process free of charge;
- (f) developing remedies that are fair and reasonable;
- (g) collecting and recording data on complaints lodged and outcomes to assist in identifying recurring problems and potential improvements to service delivery and customer relations; and
- (h) regular review of the complaints handling process to ensure it is efficiently delivering effective outcomes.

### **Complaints of consumers**

**52.** (1) If the Commission receives a complaint from a consumer and the consumer has not addressed his complaint through the complaints handling procedures of the licensee, the Commission shall refer the consumer to the respective licensee.

(2) The Commission may also conduct an investigation against a licensee provided that the consumer has followed the complaints handling procedures of the licensee.

(3) The Commission may determine the rules on the procedures for the making, receipt, handling and dispute resolution of complaints of consumers regarding the conduct or operation of licensees.

### **Circumstances in which a postal article may be opened**

**53.** (1) Subject to regulations made under this Act, a licensee may open a postal article in the following circumstances:

- (a) to secure the contents or to ascertain the condition of the contents of damaged postal articles;

- (b) to determine the addressee or sender of an undeliverable postal article in accordance with the rules made by the Commission;
- (c) if there are reasonable grounds to suspect that there is a physical danger to persons or property;
- (d) if there are reasonable grounds to suspect that there is a health risk to persons;
- (e) if it has the consent of the addressee or sender to do so;
- (f) by an order of court; or
- (g) as required by the relevant authorities or any other written law.

(2) An employee of a licensee who has been authorized by the licensee in writing may open postal articles in the circumstances under subsection (1) and in the presence of another employee who has been similarly authorized.

(3) The contents of an opened postal article may be inspected no further than is warranted in the circumstances under subsection (1).

### **Notice to be applied and report to be submitted**

**54.** (1) Where a postal article has been opened under section 53, the licensee shall repackage the postal article and stamp a notice specifying the—

- (a) that it has been opened for inspection; and
- (b) the reasons for opening the postal articles.

(2) The licensee shall maintain a record of all postal articles opened which shall specify all relevant details including—

- (a) the date and time the postal article was opened;
- (b) the contents of the postal article;
- (c) the reasons it was opened; and
- (d) the names of the person opening and witnessing the opening who shall both sign the record.

(3) The licensee shall submit, if requested by the Commission, a report to the Commission specifying in detail the circumstances of and the reasons for opening of the postal articles.

(4) A licensee shall not disclose any information in relation to the postal article opened except to the extent required to comply with a court order or as permitted under this Act.

### **Inspection by customs officials**

**55.** (1) All postal articles received from outside Malaysia may be opened and examined for the purpose of inspection at any postal network facility by a customs officer in the presence of an authorized employee of the licensee.

(2) All postal articles that are opened for customs inspection shall be repackaged and stamped with the notice that the postal articles have been opened.

### **Penalty for unlawfully disclosing contents of postal article**

**56.** Any person who reveals, discloses or in any way makes known the contents of any postal article opened under the authority of this Act, unless so far as may be necessary for the purpose of returning the postal article or as may be authorized by the Commission in writing, commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

## PART XI

### POSTCODE AND ADDRESSING SYSTEM AND POSTAL IDENTIFIERS

#### **Postcode and addressing system**

**57.** (1) The Commission shall be vested with the development, control, implementation, maintenance and management of the postcode and addressing system in Malaysia.

(2) The Commission may delegate any or all of its functions under subsection (1) to the Designated Postal Operator or any person determined by the Commission who shall carry out his obligation in the manner specified by the Commission.

### **Assignment of postal identifiers**

**58.** (1) If the Commission decides that there is a need in connection with downstream access or for any other reason, it may assign a postal identifier to the licensee.

(2) The licensee shall affix, impress or print its postal identifier on each postal article as soon as practicable after having collected the postal article, except if the postal article already bears the postal identifier.

(3) The Commission shall maintain a register of licensees and the postal identifier in accordance with subsection 99(1).

## PART XII

### POWERS AND PROCEDURES OF THE MALAYSIAN COMMUNICATIONS AND MULTIMEDIA COMMISSION

#### Chapter 1

#### *Directions*

### **Directions by the Commission**

**59.** (1) The Commission may issue directions in writing to a licensee regarding the compliance or non-compliance of any condition of a licence.

(2) The direction shall expire on such date as the Commission may specify in the written notice or if no date is specified, the direction shall be in force until it is revoked.

(3) A licensee who fails to comply with a direction of the Commission under this section commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(4) The Commission shall maintain a register of all directions issued by the Commission, including any variation or revocation of a direction in accordance with subsection 99(1).

## Chapter 2

### *Inquiry*

#### **Inquiry by the Commission**

**60.** The Commission may hold an inquiry on any matter of a general nature which relates to the administration of this Act if it is satisfied that the matter is of public interest.

#### **Conduct of an inquiry**

**61.** The Commission may conduct an inquiry either in public or in private, as and when the Commission deems fit and in accordance with the procedures as specified in the regulations.

## Chapter 3

### *Investigation*

#### **Investigation by the Commission**

**62.** Notwithstanding the provisions of any other written law, the Commission shall investigate any matter pertaining to the administration of this Act if—

- (a) the Minister directs the Commission to conduct an investigation into any civil or criminal offence under this Act which may have been or may be committed; or
- (b) the Commission has reason to believe that a civil or criminal offence under this Act was, is or will be committed.

#### **Publication of reports**

**63.** The Minister may direct the Commission to publish a report of an investigation if the Minister is satisfied that the publication would be in the national interest.



PART XIII

OFFENCES AND PENALTIES

**Unlawful acts on postal article**

- 64.** A person who maliciously—
- (a) disposes of or destroys;
  - (b) opens;
  - (c) keeps, detains or hides;
  - (d) delays, abandons or misdirects;
  - (e) tampers with; or
  - (f) obstructs,

any postal article in the course of its transmission, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Fictitious and counterfeit postage stamp**

- 65.** Any person who—
- (a) knowingly produces, uses, imports, sells or supplies any fictitious or counterfeit postage stamp or knowingly uses for postal purposes any fictitious or counterfeit postage stamp;
  - (b) has control or custody or possess without lawful excuse, any fictitious or counterfeit postage stamp; or
  - (c) produces, or let for hire, or without lawful excuse has in possession, any equipment, software or materials for making any fictitious or counterfeit postage stamp,

commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

**Installation of access points without authorization**

**66.** (1) No person shall install any access points except with the written consent of the universal service licensee.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

**Damage to postal network facilities**

**67.** (1) No person shall wilfully extend, tamper with, adjust, alter, remove, destroy or damage any postal network facility or any part of any postal network facility.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Affixing without authority or disfiguring a postal network facility**

**68.** (1) No person shall, without due authority, affix any placard, advertisement, notice, list, document, board or other thing in or on, or paint, tars or in any way disfigure, any postal network facility.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

**Evasion of postage**

**69.** (1) No person shall—

(a) use any previously used postage stamp; or

- (b) affix on any postal article anything suggesting—
- (i) that the postal article is entitled to be transmitted by post free of postage or at a lower rate of postage than that otherwise applicable to the postal article; or
  - (ii) that the postage or any part of the postage has been paid or ought to be paid by or charged to any other person,

for the purpose of evading postage.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

### **Tampering with official mark on a postal article**

**70.** (1) No person shall—

- (a) put any wrong official mark on a postal article; or
- (b) alter, remove or cause to disappear any official mark on a postal article.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

## PART XIV

### INFORMATION GATHERING POWERS AND ENFORCEMENT PROVISIONS

#### Chapter 1

#### *Information gathering powers*

### **Provision of information**

**71.** (1) This section applies to a person if the Commission has reasonable grounds to believe that the person—

- (a) has any information or any document in his custody that is relevant to the performance of the Commission's powers and functions under this Act; or

(b) is capable of giving any evidence which the Commission has reasonable grounds to believe is relevant to the performance of the Commission's powers and functions under this Act.

(2) Notwithstanding the provisions of any other written law, the Commission, by written notice, may direct a person—

- (a) to provide to the Commission, within the period and in the manner and form specified in the notice, any such information referred to in subsection (1);
- (b) to produce to the Commission, within the period and in the manner and form specified in the notice, any such document referred to in subsection (1), whether in a physical form or in electronic media;
- (c) to make copies of, or extracts from, any such documents referred to in subsection (1) and to produce copies or extracts of such document, as the case may be, to the Commission within the period and in the manner specified in the notice;
- (d) if the person is an individual, to appear before the Commission at a time and place specified in the notice to give any information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical form or in electronic media;
- (e) if the person is a body corporate, to cause a relevant and competent officer of the body corporate to appear before the Commission at a time and place specified in the notice to give any information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical form or in electronic media;
- (f) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear before the Commission at a time and place specified in the notice to give any such information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical form or in electronic media; or

(g) to make a statement to the Commission providing an explanation of any information or document referred to in subsection (1) within the period and in the manner and form specified in the notice.

(3) Where the Commission directs any person to produce any document under subsection (2) and the person is not in custody of the document, that person shall—

(a) state, to the best of his knowledge and belief, where the document may be found; and

(b) identify, to the best of his knowledge and belief, the last person who has custody of the document and where that last-mentioned person may be found.

(4) Any person directed to provide information or document under subsection (2) or (3) shall ensure that the information or document provided is true, accurate and complete and such person shall provide an express representation to that effect, including a representation that he is not aware of any other information or document which would make the information provided untrue or misleading.

(5) Any person who refuses or fails to comply with the direction of the Commission under this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

### **Commission may retain documents**

**72.** (1) The Commission may take and retain for as long as is necessary possession of any document obtained under this Chapter.

(2) The person who provided the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy of the document.

(3) Notwithstanding any other written law, the certified copy of the document shall be admissible as evidence as if it was the original document.

(4) Until a certified copy of the document is supplied, the Commission shall, at such times and places as the Commission deems appropriate, permit the person who provided the document or a person authorized by the person to inspect and make copies of or take extracts from the original document.

(5) If the Commission is satisfied that the retaining of the document is no longer necessary, the Commission may return the document to the person who provided the document as soon as practicable.

### **Access to records**

**73.** (1) A person shall, if at any time requested by the Commission by notice in writing, allow the Commission or its authorized officer access to its records for the purpose of carrying out any of the Commission's powers and functions under this Act.

(2) A person who fails to comply with the written notice under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit.

### **Incorrect records**

**74.** (1) A person shall not, in purported compliance with a requirement imposed by the rules made by the Commission under paragraph 101(*p*) in relation to record-keeping, make a record of any matter or thing in such a way that it does not correctly record the matter or thing.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

### **Record of information**

**75.** (1) The Commission shall maintain a record of all information or documents received pursuant to the direction given under section 71.

(2) A record maintained under subsection (1) may be made available to the public.

### **Publication of information**

**76.** (1) The Commission may publish any information received by it in the course of exercising its powers and functions under this Chapter.

(2) The Commission shall consider the commercial interests of the parties to whom the information relates before publishing such information.

(3) The Commission shall not publish any information or any part of any information disclosed to it if the publication—

(a) is likely to prejudice the fair trial of a person; or

(b) would involve the unreasonable disclosure of personal information about any individual, including a deceased person,

but the Commission may publish an extract relating to such information provided that the particulars in the extract shall not be arranged in any way which would compromise or prejudice the person providing such information.

## Chapter 2

### *Enforcement powers of authorized officer*

#### **Authorized officer**

**77.** (1) The Minister may in writing authorize any public officer or officer of the Commission to exercise the powers of enforcement under this Act.

(2) Any such officer shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

(3) In exercising any of the powers of enforcement under this Act, an authorized officer shall on demand produce to the person against whom he is acting the authority issued to him by the Minister.

**Power of investigation**

**78.** (1) An authorized officer shall have all the powers necessary to carry out an investigation under this Act.

(2) An authorized officer may investigate the activities of a licensee or other person material to his compliance with this Act.

(3) In any case relating to the commission of an offence under this Act, an authorized officer carrying out an investigation may exercise all or any of the powers in relation to police investigation in seizure cases given by the Criminal Procedure Code [Act 593].

**Search and seizure with warrant**

**79.** (1) If it appears to a Magistrate, upon written information on oath from an authorized officer and after such inquiry as the Magistrate considers necessary, that there is reasonable cause to believe that an offence under this Act is being committed on any premises, or that any evidence or thing which is necessary to the conduct of an investigation into an offence may be found on the premises, the Magistrate may issue a warrant authorizing any police officer not below the rank of Inspector, or any authorized officer named on it, to enter the premises at any reasonable time by day or night, with or without assistance and if need be by force, and there to search for and seize any such evidence or thing.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the search and seizure of—

- (a) any book, record, account, or other document, including computerized data which contains or is reasonably suspected to contain information as to any offence so suspected to have been committed or is otherwise necessary to conduct an investigation into an offence;
- (b) any signboard, card, letter, pamphlet, leaflet or notice representing or implying that the person has a licence issued under this Act; or



(c) any document, equipment, instrument or article that is reasonably believed to furnish evidence of the commission of the offence.

(3) An authorized officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(4) An authorized officer may detain any person found on any premises searched under subsection (3) until the search is completed.

(5) An authorized officer making a search of a person under subsection (3) may seize or take possession of, and place in safe custody all things, other than the necessary clothing found upon the person, and any other things which there is reason to believe were the instruments or other evidence of the offence, and they may be detained until the discharge or acquittal of the person.

(6) No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

(7) If, by reason of its nature, size or amount, it is not practicable to remove any book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized under this section, the authorized officer shall by any means seal such book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter in the premises or container in which it is found.

(8) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (7) or removes any book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter under seal or attempts to do so commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

**Warrant admissible notwithstanding defects**

**80.** A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the warrant or in the application for such warrant and any book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized under such warrant shall be admissible in evidence in any proceedings under this Act.

**Access to computerized data**

**81.** (1) An authorized officer conducting a search under section 79 shall be given access to computerized data whether stored in a computer or otherwise, and for such purpose, shall be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerized data.

(2) A person who fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

**List of books, records, accounts, documents *etc.*, seized**

**82.** (1) Except as provided in subsection (2), where any books, records, accounts, documents, computerized data, signboards, cards, letters, pamphlets, leaflets, notices, equipment, instruments or matters are seized pursuant to this Act, the authorized officer making the seizure—

(a) shall prepare—

- (i) a list of the books, records, accounts, documents, computerized data, signboards, cards, letters, pamphlets, leaflets, notices, equipment, instruments or matters seized and shall sign the list; and
- (ii) a written notice of the seizure containing the grounds for the seizure and shall sign the notice; and

(b) shall as soon as practicable serve a copy of the list made under subparagraph (a)(i) and the written notice of the seizure to the occupier of the premises which have been searched, or to his agent or servant at those premises.

(2) The written notice of the seizure shall not be required to be served under paragraph (1)(b) where the seizure is made in the presence of the person against whom proceedings under this Act are intended to be taken, or in the presence of the owner of such property or his agent, as the case may be.

(3) If the premises are unoccupied, the authorized officer shall post a copy of the list of the books, records, accounts, documents, computerized data, signboards, cards, letters, pamphlets, leaflets, notices, equipment, instruments or matters seized conspicuously on the premises.

### **Forfeiture**

**83.** (1) Any book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized under this Act shall be liable to forfeiture.

(2) An order for the forfeiture of the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized and liable to forfeiture under this Act shall be made by the court before which the prosecution with regard to it has been held if it is proved to the satisfaction of the court that an offence under this Act or any breach of the conditions subject to which a licence has been granted, has been committed and that the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized was the subject matter of or were used in the commission of the offence, notwithstanding that no person has been convicted of such offence.

(3) If there is no prosecution with regard to any book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized under this Act, such book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment,

instrument or matter shall be taken or deemed to be forfeited at the expiration of a period of one calendar month from the date of service of notice to the last-known address of the person from whom the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter was seized indicating that there is no prosecution in respect of such book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter, unless before the expiration of that period a claim to it is made before that date in the manner provided in this section.

(4) A person asserting that he is the owner of the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter referred to in subsection (3) and that it is not liable to forfeiture may, personally or by his agent authorized in writing, give written notice to the Commission or any authorized officer in whose possession book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter is held that he claims the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter.

(5) On receipt of the notice under subsection (4), the Commission or any authorized officer shall refer the matter to a First Class Magistrate for his decision.

(6) A First Class Magistrate to whom the matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter and the person from whom it was seized to appear before a First Class Magistrate and upon their appearance or default to appear, due service of the summons having been proved, a First Class Magistrate shall proceed to the examination of the matter and, on proof that an offence under this Act has been committed and that the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized was the subject matter or was used in the commission of

such offence, the First Class Magistrate shall order the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter to be forfeited, and shall, in the absence of such proof, order its release.

(7) Any book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter forfeited or deemed to be forfeited shall be delivered to the Commission or an authorized officer and shall be disposed of in the manner as the Commission thinks fit.

### **Release of books, records, accounts, documents, etc., seized**

**84.** (1) If any book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter has been seized under this Act, the authorized officer who effected the seizure may, after referring to the Public Prosecutor, release the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter to the person as he determines to be lawfully entitled to it, if the book, record account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter is not liable to forfeiture under this Act and is not otherwise required for the purpose of any proceedings under this Act or for the purpose of any prosecution under any other written law, and in such event neither the authorized officer effecting the seizure, nor the Federal Government, Commission or any person acting on behalf of the Federal Government or Commission shall be liable to any proceedings by any person if the seizure and the release of the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter had been effected in good faith.

(2) A record in writing shall be made by the authorized officer effecting the release of the book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter under subsection (1) specifying in detail the circumstances of and the reason for the release, and he shall send a copy of the record to the Public Prosecutor within seven days of the release.

**Additional powers**

**85.** An authorized officer shall, for the purpose of the execution of this Act, have power to do all or any of the following:

- (a) to require the production of any book, record, account, document or computerized data kept by a licensee or other person and to inspect, examine and to download from them, make copies of them or take extracts from them;
- (b) to require the production of any identification document from any person in relation to any case or offence under this Act; and
- (c) to make such inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with.

**Power to require attendance of person acquainted with case**

**86.** (1) An authorized officer making an investigation under this Act may by order in writing require the attendance before himself of any person who appears to the authorized officer to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any person refuses or fails to attend as so required, the authorized officer may report such refusal or failure to a Magistrate who shall issue a summon to secure the attendance of such person as may be required by the order made under subsection (1).

**Examination of person acquainted with case**

**87.** (1) An authorized officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be legally bound to answer all questions relating to the case put to him by the authorized officer provided that the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) The authorized officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be taken down in writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

### **Admissibility of statements in evidence**

**88.** (1) Except as provided in this section, no statement made by any person to an authorized officer in the course of an investigation made under this Act shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to the authorized officer in the course of the investigation under this Act and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [Act 56].

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950.

(5) When any person is charged with any offence in relation to—

(a) the making; or

(b) the contents,

of any statement made by him to an authorized officer in the course of an investigation made under this Act, that statement may be used as evidence in the prosecution's case.

### **Authorized officer to complete investigation and hand over to police**

**89.** Upon completion of his investigation into an offence under this Act, the authorized officer shall immediately give all information relating to the commission of the offence to an officer in charge of a police station and a police officer may, by warrant, arrest a person who may have committed an offence under this Act.

### **No cost or damages arising from seizure to be recoverable**

**90.** No person shall, in any proceedings before any court in respect of any book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized in the exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

### **Institution of prosecution**

**91.** No prosecution for or in relation to any offence under this Act shall be instituted without the written consent of the Public Prosecutor.

### **Jurisdiction to try offences**

**92.** Notwithstanding any written law to the contrary, a Court of a First Class Magistrate shall have jurisdiction to try any offence under this Act and may impose the full penalty for such offence.

### **Offence for giving false and misleading information**

**93.** A person who discloses or provides information to the Commission or authorized officers which he knows or has reason to believe is false or misleading commits an offence and shall,



on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Chapter 3

*Miscellaneous*

**Obstruction**

**94.** Any person who—

- (a) refuses any authorized officer access to any premises which such authorized officer is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act;
- (b) assaults, obstructs, hinders or delays any authorized officer in effecting any entry which the authorized officer is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (c) refuses to give any authorized officer any information relating to an offence or suspected offence under this Act or any other information which he has in his knowledge or power to give;
- (d) rescues or endeavours to rescue or causes to be rescued anything which has been duly seized; or
- (e) destroys anything to prevent the seizure or the securing of the things,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

**Compounding of offences**

**95.** (1) The Minister may prescribe any offence under this Act as an offence which may be compounded.

(2) The Commission may, with the consent in writing of the Public Prosecutor, compound any offence by any person under this Act and prescribed to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Commission of an amount of money not exceeding fifty per centum of the maximum fine for that offence within such time as may be specified in the written offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or such extended time as the Commission may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any book, record, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized in connection with the offence may be released by the Commission, subject to such terms and conditions as the Commission thinks fit to impose in accordance with the conditions of the compound.

(5) All sums of money received by the Commission under this section shall be paid into the Federal Consolidated Fund.

### **Offences by body corporate**

**96.** (1) If a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, chief executive officer, chief operating officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed—

(a) by that person's employee in the course of his employment;

(b) by the agent when acting on behalf of that person; or

(c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

### **Abetment and attempt punishable as offences**

**97.** (1) A person who abets the commission of or who attempts to commit any offence under this Act shall be guilty of that offence and shall, on conviction, be liable to the punishment provided for the offence.

(2) A person who does any preparatory to or in furtherance of the commission of any offence under this Act shall be guilty of that offence and shall, on conviction, be liable to the punishment provided for that offence:

Provided that any term of imprisonment imposed shall not exceed one-half of the maximum term provided for that offence.

## PART XV

## GENERAL

**Postal Service Fund**

**98.** (1) A fund to be known as the “Postal Service Fund” (“PS Fund”) is established and which shall be controlled and operated by the Commission.

(2) All licensees shall contribute to the PS Fund in the manner as prescribed by the Minister.

(3) The PS Fund shall consist of—

(a) such sum of money as may be provided by the Parliament;  
and

(b) all monies contributed by licensees or by any other person.

(4) The PS Fund shall be expended for the following purposes:

(a) to facilitate universal service throughout Malaysia in accordance with this Act;

(b) to facilitate the expansion and improvement of the postal network;

(c) to improve and respond to the need of consumers through the use of technology; and

(d) such other purpose related to postal services as may be determined by the Minister.

(5) It shall be the duty of the Commission to conserve the PS Fund by so performing its functions and exercising its powers under this Act as to secure that the total PS Fund is sufficient to meet all expenditures under subsection (4).

(6) The Minister, on the recommendation of the Commission, shall make regulations regarding contributions to the PS Fund and any other matters related to or incidental to the establishment and operation of the PS Fund.

## Register

**99.** (1) The Commission shall maintain a register in both physical and electronic form of all matters which are required to be registered under this Act, including—

- (a) any licence granted by the Minister;
- (b) any standard conditions specified in the licence;
- (c) any additional conditions specified in the licence;
- (d) any variation or revocation of conditions specified in the licence;
- (e) any suspension or revocation of licence;
- (f) any surrender of licence; and
- (g) any written approval from the Minister to the transfer of a licence.

(2) A person may, on payment of a prescribed fee—

- (a) inspect the register; and
- (b) make a copy of, or take extracts from, the register.

(3) If a person requests that a copy be provided in electronic form, the Commission may provide the relevant information—

- (a) on a data processing device; or
- (b) by way of electronic transmission.

## Power of Minister to make regulations

**100.** The Minister may, on the recommendation of the Commission, make regulations for all or any of the following purposes:

- (a) to prescribe all matters relating to the issuance of universal service licences and non-universal service licences under this Act;
- (b) to prescribe the procedures for the Commission to exercise its powers and functions under this Act;
- (c) to prescribe the form of notifications, notices and orders to be made under this Act;

- (d) to define the scope and exceptions of the universal service;
- (e) to designate a universal service licensee as a Designated Postal Operator;
- (f) to prescribe the funding of the universal service;
- (g) to prescribe the rates to be charged with respect to products and services that are within the universal service;
- (h) to prescribe fees and charges under this Act, which includes to exempt payment of any fees and charges on such terms and conditions as the Minister deems fit;
- (i) to prescribe on philatelic matters and the issuance of postage stamps;
- (j) to prescribe all matters on postal financial services;
- (k) to prescribe all matters relating to consumer protection;
- (l) to provide the offences which may be compounded and the forms to be used;
- (m) to prescribe the implementation of and other matters relating to the postcode and addressing system;
- (n) to prescribe any other matter for which this Act makes express provision to be prescribed; and
- (o) to prescribe all other matters as are necessary or expedient to be prescribed for giving effect to this Act.

### **Power of the Commission to make rules**

**101.** The Commission may make rules for all or any of the following purposes:

- (a) addressing standards to be used in preparation of postal articles for delivery;
- (b) postal services performance standards;
- (c) post office's customer service performance standards;
- (d) postal services security;
- (e) technical standards for the provision of postal services;

- (f) letter boxes and other facilities and standards used for postal services;
- (g) downstream access and postal identifiers;
- (h) general terms and conditions of licensees;
- (i) limitation of liability of licensees;
- (j) complaints handling procedure;
- (k) compensation scheme for service performance failure;
- (l) prohibited postal articles;
- (m) provision of incidental services of receiving, collecting, sorting, sending and delivery of postal articles;
- (n) undeliverable and redirected postal articles;
- (o) provision on disposal of opened postal articles;
- (p) the manner of record-keeping; and
- (q) such other matters for which this Act makes express provision for the Commission to make rules.

### **Penalties for subsidiary legislation**

**102.** Any subsidiary legislation made under this Act may provide for any act or omission in contravention of its provisions to be an offence and may provide for penalties of a fine not exceeding three hundred thousand ringgit or a term of imprisonment not exceeding three years or to both.

### **Public Authorities Protection Act 1948**

**103.** The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Commission, the Chairman, any member, officer, servant or agent of the Commission and any authorized officer in respect of any act, neglect or default done or omitted by him in good faith or any omission omitted by him in good faith, in such capacity.

**Protection of officers and other persons**

**104.** No action or prosecution shall be brought, instituted or maintained in any court against—

- (a) the Commission, any member of the Commission, any employee or agent of the Commission in respect of any act ordered to be done for the purpose of carrying into effect this Act; and
- (b) any other person in respect of any act done or purported to be done by him under the order, direction or instruction of the Commission or an authorized officer if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.

**PART XVI****NATIONAL INTEREST MATTERS****General duty of licensees**

**105.** (1) A licensee shall use his best endeavour to prevent the network facilities that he owns or provides or the service network that he provides from being used in, or in relation to, the commission of any offence under any law of Malaysia.

(2) A licensee shall, upon written request by the Commission or any other authority, assist the Commission or other authority as far as reasonably necessary in preventing the commission or attempted commission of an offence under any written law of Malaysia or otherwise in enforcing the laws of Malaysia, including, but not limited to, the protection of the public revenue and preservation of national security.

**Person not liable for act done in good faith**

**106.** A licensee or any of his employees shall not be liable in criminal proceedings of any nature for any damage (including punitive damages), loss, cost or expenditure suffered or to be suffered (whether directly or indirectly) for any act or omission done in good faith in the performance of the duty imposed under section 105.



**Interworking with other authorities**

**107.** (1) The Minister may direct the Commission regarding the interworking arrangements between the Commission and any other authority in Malaysia or in a foreign jurisdiction or any international organization.

(2) The Commission may make rules, to be published in the *Gazette*, or determine arrangements for interworking with, or membership of, international organizations regarding the interworking arrangements between the universal service licensee and international organizations.

**Special powers in emergency**

**108.** (1) On the occurrence of any public emergency or in the interest of public safety, the Yang di-Pertuan Agong may—

- (a) suspend the licence of any licensee, take temporary control of any postal network facilities or postal service network owned or provided by a licensee in any manner as he thinks fit;
- (b) withdraw either totally or partially the use of any postal network facilities or postal service network from any licensee, person or from the public at large;
- (c) order that any service being provided by a licensee to a person, class of persons or the general public, be suspended until further written notice is given by the Yang di-Pertuan Agong that the suspension be lifted; or
- (d) order that any postal article to or from any person shall not be conveyed or shall be intercepted or detained and delivered to any officer mentioned in the order to be opened, examined or dealt with in such manner as the Yang di-Pertuan Agong may direct.

(2) The Yang di-Pertuan Agong may also authorize any other officer employed by the Government to carry out the powers conferred under subsection (1).

(3) The licensee shall give all necessary assistance whenever required to do so by the Commission or an authorized officer carrying out any of the powers conferred under this section.

**Disaster plan**

**109.** The Commission may direct any licensee to develop, in consultation with the authorities specified by the Commission, a disaster plan for the survivability and recovery of any postal network facilities or postal services network in case of a disaster, crisis or civil emergency.

**PART XVII****SAVINGS AND TRANSITIONAL****Savings and transitional**

**110.** (1) The Postal Services Act 1991 [*Act 465*] (the “repealed Act”) is repealed.

(2) Any subsidiary legislation made under the repealed Act shall, in so far as it is not inconsistent with this Act, remain in operation until revoked or replaced by subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act.

(3) Any registration, act, order, direction, approval or decision done, made or given before the appointed date shall be deemed to have been done, made or given under this Act and shall continue in full force and effect in relation to whom they apply until amended or revoked under this Act or new rules, regulations or other subsidiary legislation are made under this Act or until the date of its expiry.

(4) Nothing in the repealed Act or this Act shall affect any person’s liability to be prosecuted or punished for offences or breaches committed under the repealed Act before the appointed date, or any proceedings brought, sentence imposed or action taken before that day in respect of such offence or breach.

**Licences issued under the repealed Act for a period of three years or less**

**111.** (1) Subject to subsection (2), a licence issued under the repealed Act for a period of three years or less shall continue to have effect under this Act until the expiration date of the licence.

(2) A licence that was issued under the repealed Act for a period of three years or less and has a remaining period of less than one year at the appointed date, shall be deemed to have been extended for one year from the expiration date of the licence.

(3) A holder of a licence issued under the repealed Act may apply for a licence under this Act in substitution for the licence issued under the repealed Act before the expiration date of the licence.

**Licences issued under the repealed Act for a period of more than three years**

**112.** (1) A licence issued under the repealed Act for a period of more than three years shall continue to have effect under this Act for a period of two years from the appointed date.

(2) A holder of a licence issued under the repealed Act for a period of more than three years shall apply, not later than two years after the appointed date, for a licence to be granted to him under this Act in substitution for the licence issued under the repealed Act.

(3) The licence issued under the repealed Act for a period of more than three years shall lapse if the holder does not apply for a licence under this Act within two years after the appointed date as stipulated under subsection (2).

FIRST SCHEDULE

[Section 12]

1. Trade announcements, circulars, printed extracts from newspapers, or advertisements, without any name, address or other particulars of the recipient.
2. Postal articles delivered by an employee of the sender.
3. Postal articles delivered by a messenger on request by the sender specifically for that purpose, not being a person employed or engaged in the course of his business or employment in delivering or procuring the delivery of postal articles.

4. Postal articles exceeding two kilograms in weight per postal article.
5. Postal articles sent with the goods and delivered together with the goods.
6. Postal articles carried to or from a post office.
7. Postal articles carried in accordance with an agreement entered into by the licensee.
8. Transfers between document exchanges.
9. Electronic postal services.
10. Postal articles carried and delivered by a private friend without hire, reward or other profit.
11. Postal articles carried and delivered personally by the sender.

## SECOND SCHEDULE

## [Section 24]

1. “Post Office”
2. “Pejabat Pos”
3. “Postal Agent”
4. “Wakil Pos”
5. “Mini Post”
6. “Pos Mini”
7. “Stamp Agent”
8. “Wakil Jualan Setem”
9. “Posting box”
10. “Peti Surat Pos”
11. “P.O. Box”
12. “Peti Surat Pejabat Pos”