

TELECOMMUNICATIONS BUSINESS ACT

B.E. 2544 (2001)

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TELECOMMUNICATIONS BUSINESS ACT
B.E. 2544 (2001)

BHUMIBOL ADULYADEJ, REX;
Given on the 9th Day of November B.E. 2544 (2001);
Being the 56th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas, it is expedient to enact the law on telecommunications business operation.

This Act contains certain provisions concerning the restriction of the rights and liberties of persons, which Section 29 together with Section 34, Section 37, Section 39, Section 48 and Section 50 of the Constitution of the Kingdom of Thailand provide for to be enacted by virtue of the provisions of the law.

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1 This Act is called “Telecommunications Business Act, B.E. 2544 (2001).”

Section 2¹ This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3 The following shall be repealed:

- (1) Telegraph and Telephone Act, B.E. 2477 (1934);
- (2) Telegraph and Telephone Act (No. 2), B.E. 2517 (1974).

Section 4 In this Act:

"Telecommunications Business" means a telecommunications business under the law on the organization to assign radio frequency and to regulate the broadcasting and telecommunications services;

¹ Government Gazette, Volume 118/Part 106 Gor/Page 11/16th November B.E. 2544 (2001).

"Telecommunications Business Operation" means the business of providing telecommunications services to other persons;

"Telecommunications Number" means digits, letters, or any other symbols or a combination thereof which indicate destination in telecommunications network for telecommunications purpose;

"Telecommunications Network" means a group of telecommunications devices that are connected directly to each other or through switching equipment or any other device for telecommunications between designated destinations by means of a cable, frequency spectrum, optical, or other electromagnetic system, or a combination thereof;

"Interconnect" means the connection between telecommunications networks under technical and commercial agreements to enable users of one telecommunications operator to communicate with users or use telecommunications services of the other telecommunications operator;

"Commission" means the National Telecommunications Commission under law on the organization to assign radio frequency and to regulate the broadcasting and telecommunications services;

"Office" means the Office of the National Telecommunications Commission;

"Secretary General" means the Secretary General of the National Telecommunications Commission;

"Officer" means the person appointed by the National Telecommunications Commission to perform the duties under this Act as of its publication in the Government Gazette.

Section 5 The Prime Minister shall have charge and control of the execution of this Act.

Section 6 The Commission shall have the power to appoint officers and issue notification prescribing other businesses for the implementation of this Act.

Such notification shall come into force upon its publication in the Government Gazette.

CHAPTER I
Licensing of Telecommunications Business Operation

Section 7 Any person who wishes to operate a telecommunications business in accordance with the characteristics and types prescribed by the Commission under the law on the organization to assign radio frequency and to regulate the broadcasting and telecommunications services shall obtain a license from the Commission.

There are three types of telecommunications business operation licenses as follows:

(1) Type One License is a license for a telecommunications operator that does not have its own telecommunications network and is a business with reasonable characteristics to provide services freely. The Commission shall issue a license to operate the business once the applicant has notified the Commission of their intention to operate such business;

(2) Type Two License is a license for a telecommunications operator with or without its own network, which is a business that has the purpose of providing services limited to a group of individuals or a business that does not have a significant impact on free and fair competition or on the public interest and consumers. The Commission shall grant a license once a person who intends to operate such business has completely fulfilled the standard criteria prescribed in advance in notification of the Commission;

(3) Type Three License is a license for a telecommunications operator with its own network, which is a business that is intended to provide services to a large number of individuals or may have a significant impact on free and fair competition, or may affect the public interest, or there is a special need for consumer protection. A person who intends to operate such business can commence the operation only after said person is approved and granted a license by the Commission.

Type One, Type Two or Type Three licensee shall have the right to operate a telecommunications business in any manner or type, as well as the scope of services, as determined by the Commission, which shall be consistent with the nature of each type of license specified under paragraph two, and shall take into account the development of a variety of telecommunications services, including fairness among business operators.

To apply for a license, the applicant shall indicate what type of license it is applying for, and the nature or type of telecommunications business that the applicant wishes to operate. If it wishes to add business operation of different nature or type after the

permission is granted, it shall notify the Commission before commencing the business. In such case, the Commission may prescribe certain conditions the applicant has to fulfill.

Section 8 The Commission shall prescribe in notification and disclose to general public the licensing criteria so that the person who intends to operate the business will be informed in advance of the applicant qualification, the application procedure, and the license-granting criteria. Those licensing criteria shall be differently prescribed in accordance with types of license under Section 7, and in accordance with each characteristic and type of telecommunications business and shall comply with the guidelines for licensing the use of frequency spectrum and the licensing of telecommunications business operation in the telecommunications master plan and radio frequency plan in accordance with the law on the organization to assign radio frequency and to regulate the broadcasting and telecommunications services.

For the notification under paragraph one, the Commission shall prescribe details regarding the qualifications of the applicant for a license, the procedures of obtaining a license, the documents, evidence or information required for licensing, the procedures of consideration for issuance of a license, the period of consideration of the Commission, the scope of license, the maximum and minimum term of license, and other conditions necessary for business operation.

In determining the qualifications of the license applicant, the following criteria shall be met:

(1)² the applicant for Type Two and Type Three licenses shall not be a foreigner under the law on foreign business. In this regard, the Commission may prescribe that the applicant for licenses for certain characteristics or types of business operations, which is a juristic person, shall also establish prohibitions on acts constituting foreign domination of the business;

(2) the applicant shall not be a bankrupt;

(3) the applicant shall never have a telecommunications business license revoked;

(4) a person who is the director, manager or the person with the authority to manage the license applicant shall not have been found guilty by a court of a final judgment under this Act or under the law on telegraph and telephone, the law on radiocommunications or the law on consumer protection within two years prior to the application for a license;

² Section 8 paragraph three (1) is amended by the Telecommunications Business Act (No. 2), B.E. 2549 (2006).

(5) the applicant for Type Three License shall have an investment plan and a telecommunications service plan that can provide effective services;

(6) the applicant shall possess the qualifications and shall not have other prohibited characteristics as prescribed by the Commission for the application for each type of license under Section 7.

Section 9 The operation of telecommunications business for Type Three License shall have the period specified in the license, which shall be within the maximum and minimum term of license as prescribed by the Commission.

For the renewal of Type Three License, the licensee shall submit an application prior to the license's expiration date, after which the applicant shall be deemed to be the licensee until receiving the order not to renew the license, provided that the Commission shall consider and notify the licensee of the order within thirty days from the date of receipt of the application.

The application for renewal of the license and license renewal approval shall be in accordance with the criteria, procedures and conditions prescribed by the Commission which shall also comply with the criteria under Section 8.

The term of licenses and renewal of licenses shall be determined by the Commission by taking into account the period according to the investment plan, the scope of services, the business development guidelines of the applicant, the protection of consumers who will receive continuous services and the results of the evaluation of business operations.

The operation of a telecommunications business that has been granted Type One License or Type Two License can be carried out throughout its service period, but when the licensee wishes to terminate the service, it shall notify the Commission at least one month in advance. In this regard, the Commission may prescribe conditions to be complied by the licensee prior to the termination of service.

Section 10 In applying for a license to operate a telecommunications business, if the telecommunications business uses a frequency spectrum, the applicant for the license shall also be authorized to use the frequency spectrum in accordance with the law on the organization to assign radio frequency and to regulate the broadcasting and telecommunications services.

In the case where the authorization to use the frequency spectrum of licensee is revoked, it shall be deemed that the license to operate the telecommunications business in the part operating using that frequency spectrum shall also be revoked.

Section 11 The licensee shall pay the spectrum fee, Telecommunications Number fee and business license fee according to the rate, criteria and procedures prescribed by the Commission. In this regard, such fees shall not impose an undue burden on the operators or the service users.

The determination of rates and criteria for spectrum fee and Telecommunications Number fee shall be determined by the Commission, taking into account the public interest, cost-effectiveness, scarcity and method of allocation of such resources.

The determination of the rates and criteria for telecommunications business license fees shall be determined by the Commission, taking into account the type of license and the cost of regulating telecommunications business operations arising from the performance of duties under this Act.

Section 12 In issuing a license for a telecommunications business that requires Telecommunications Numbers as prescribed in the telecommunications numbering plan, the Commission shall determine the Telecommunications Numbers for use in the service or the service area for the operation of the telecommunications business of the licensee.

The licensee shall only provide the Telecommunications Numbers to general public with Telecommunications Numbers authorized by the Commission.

In the case where it appears that the licensee has not provided the authorized Telecommunications Numbers for service without reasonable reasons or has provided the unauthorized Telecommunications Numbers for service, the Commission shall have the power to order the licensee to proceed as authorized or to suspend the use of such Telecommunications Numbers. The licensee shall have no right to claim for any damages.

In the case of protecting the interests of the user and when there is technical readiness, the Commission shall prescribe guidelines and criteria for the user to have the right to use the same Telecommunications Numbers when the user wishes to change the service provider, place or type of service. In this regard, the Commission shall also hold a hearing from the licensees concerned.

Subject to the measures prescribed by the Commission under Section 50 paragraph one, the licensee shall be obliged to provide the information of Telecommunications Numbers of the users to the persons requesting it for the purpose of making user directory. In such case, the licensee can charge only for the cost of providing that information.

Section 13 For the purpose of determining Telecommunications Numbers for the licensee to use in the service, the preparation of the telecommunications numbering plan of the Commission under the law on the organization to assign radio frequency and to regulate the broadcasting and telecommunications services shall consist of the following criteria:

(1) there shall be sufficient Telecommunication Numbers for the provision of services;

(2) there shall be efficient and fair use of Telecommunications Numbers;

(3) the telecommunications numbering plan shall facilitate the classification of the characteristics and types of services and equipment used in the telecommunications business in a simple and clear manner;

(4) the telecommunications numbering plan shall be amended only in the case of necessity.

In the case where the Commission determines or amends the telecommunications numbering plan, whether in whole or in part, the licensee shall be obliged to comply with the criteria prescribed by the Commission.

Section 14 In the case where the licensee wishes to request the extension of the service by increasing the number of Telecommunications Numbers used for the service or by expanding the service area, the licensee shall submit an application to the Commission.

In the case where the Commission considers that the increase in the number of Telecommunications Numbers or the expansion of the service area will be of public interest and will not be of a nature that restricts the fair competition on the telecommunications business, the Commission may consider allowing the licensee to proceed in accordance with the criteria and conditions prescribed by the Commission. In this regard, the Commission shall consider and notify the licensee within thirty days from the date of receipt of the request. The Commission shall charge the telecommunications

business fee for the additional authorization in accordance with the criteria prescribed by the Commission.

Section 15 In the operation of telecommunications business, the licensee shall comply with the criteria prescribed under the law on the organization to assign radio frequency and to regulate the broadcasting and telecommunications services and the conditions prescribed by the Commission.

In determining the conditions for the granting of a license, the Commission shall specify certain rights, duties, and responsibilities of the licensee in a clear manner as well as the licensee's telecommunications service plan, which shall, at a minimum, stipulate the procedures and timeline for initiating services, details of the nature or type of services, service fees, directory information service and other necessary aspects for service provision for the public interest.

In the case where there is an important reason to protect the public interest or a change in the law or circumstances, the Commission shall have the power to revise the licensing conditions as necessary.

Section 16 In the case where the licensee is permitted to operate a business with Telecommunications Numbers or in a designated area, if it appears to the Commission that the licensee does not supply a service in accordance with a telecommunications service plan prescribed as licensing conditions under Section 15 without reasonable reasons and the Commission considers that it is affecting the public interest, the Commission shall have the power to withdraw certain amount of authorized Telecommunications Numbers or limit the size of authorized service area. In this regard, the licensee shall have no right to claim for any damages.

Section 17 The Commission shall have the duty to provide universal basic telecommunications services and shall have the power to require the licensee to provide the following telecommunications services:

(1) to provide telecommunications services in rural areas or areas with low return on investment, or any area where there is no or insufficient service providers or where there is insufficient supply of service to meet the user demand;

(2) to provide telecommunication services for educational institutions, religious institutions, medical facilities and other agencies that provide assistance to society;

(3) to provide public telecommunications services in a certain manner or types as prescribed by the Commission to low-income persons;

(4) to provide services to facilitate the use of public telecommunications services for the disabled, children, the elderly and the disadvantaged in society;

(5)³ to provide operations related to telecommunications services for the purpose of national security or public interest.

The criteria, procedures and conditions for requiring the licensee to provide telecommunications services under paragraph one shall be in accordance with the notification prescribed by the Commission.

The Commission shall issue the notification under paragraph two in advance so that applicants for the license are informed of the scope of providing telecommunications services specified in paragraph one before submitting their application for the license.

The requirement for the licensee to provide telecommunications services under this Section shall not impose an unreasonable burden on the licensee's investment, and shall ensure equal treatment among licensees operating telecommunications business of the same nature and type.

Section 18 In the case where any licensee is unable to provide telecommunications services as determined by the Commission under Section 17, or in the case where it is deemed appropriate for the licensee to assume shared responsibility for providing universal basic telecommunications services, the Commission shall have the authority to require such licensee to allocate a portion of the revenue derived from providing telecommunications services to the Telecommunications Development Fund for Public Benefit, in accordance with the law on the organization to assign radio frequency and to regulate the broadcasting and telecommunications services for the provision of telecommunications services as specified under Section 17.

Section 19 The Commission shall have the power to prescribe any measures to support and encourage new licensees to have the opportunity to provide

³ Section 17 (5) is added by the Order of the Head of the National Council for Peace and Order No. 8/2562 Re: Measures to Address Issues of Continuity of the Commissioners of the National Broadcasting and Telecommunications Commission, as well as the Expansion of Telecommunications Services for the Purposes of National Security and Public Interest of the Country.

telecommunications services in any area competing with other licensees in an efficient, equitable and fair manner.

Section 20 The licensee shall not suspend or terminate the services, in whole or in part, unless permitted by the Commission in accordance with the criteria and procedures prescribed by the Commission.

Licensee shall not refuse to provide services to any person without reasonable cause.

Section 21 In operating the telecommunications business, in addition to being subject to the law on competition, the Commission shall prescribe specific measures according to the nature of the telecommunications business operation to prohibit the licensee from committing any act that monopolizes, reduces or restricts competition in the provision of telecommunications services in the following matters:

- (1) service subsidies;
- (2) business holding in the same type of service;
- (3) abuse of market power;
- (4) anti-competitive behavior;
- (5) protection of small entrepreneurs.

Section 22 The licensee shall report to the Secretary General without delay when the following events occur:

- (1) the licensee suffers serious damage to the extent that may cause problems in providing telecommunications services;
- (2) the licensee intends to engage in any telecommunications business operation other than the business for which a license has been granted;
- (3) the licensee intends to enter into a contract to authorize another person to have all or part of the authority to administer the licensee's business;
- (4) the licensee commits an act, or is committed an act in the manner of business takeover or business taken over in accordance with the law on securities and security exchange;
- (5) any case that affects or may affect the business operation or service provision of the licensee as prescribed by the Commission.

Reporting under (2) and (3) shall be made by the licensee before proceeding. In case of (1), (4) and (5), the report shall be made as soon as such incident occurs.

Upon receipt of the report under paragraph two, the Secretary General shall propose the matter to the Commission without delay. In this regard, the Commission shall have the power to prescribe conditions for the licensee to comply with to prevent the damage to the public interest.

Section 23 The Commission may require the licensee to provide a system for recording information about proof of the use of telecommunications services by the user to enable the user to make verification.

Section 24 In the case where a telecommunications business operation of certain nature or categories has involved specific technologies, rendering the provisions in this Chapter inapplicable or incompatible with such telecommunications business operations, the Commission shall have the authority to stipulate conditions applicable to the conduct of telecommunications business operations based on the specific nature and types of those telecommunications business.

The determination of the conditions for the operation of the telecommunications business under paragraph one shall be in accordance with the notification prescribed by the Commission.

CHAPTER II

Access and Interconnection of Telecommunications Networks

Section 25 A licensee who owns telecommunications networks shall have duties to allow other licensees to interconnect with their telecommunications networks in accordance with the criteria and procedures prescribed by the Commission.

A licensee who owns a telecommunications network shall allow other licensees to access their telecommunications network in accordance with the criteria and procedures prescribed by the Commission.

Refusal of the access to the telecommunications network can only be made in the following cases:

(1) the existing telecommunications network is insufficient for other licensees to access the telecommunications network;

(2) the access to the telecommunications network has technical problems that may cause interference with telecommunications business or cause obstruction to telecommunications;

(3) other cases as prescribed by the Commission.

The licensee who owns telecommunications network who refuses the access to their telecommunications network under paragraph three shall have the duty to prove the grounds for such refusal.

Charges for the network access or interconnection shall be reasonable and fair to the licensee who owns the telecommunications network and the person who requests the telecommunication network access or interconnection. There shall be equality among all persons who request the telecommunication network access or interconnection.

In determining the criteria and procedures under paragraphs one and two, the Commission shall hold a hearing from relevant licensees.

Section 26 In the case where there is a refusal of the access to the telecommunications network or there is an agreement that cannot be agreed in negotiating the contract for the access or interconnect of the telecommunications network, the parties have the right to request for the decision of the Commission in accordance with the criteria and procedures prescribed in the notification of the Commission. The decision of the Commission shall be final.

During the deliberations of the Commission under paragraph one, if there is a case of necessity, the Commission may order temporary network access or interconnect in accordance with the criteria and procedures prescribed by the Commission.

Section 27 A contract for the access or interconnection of a telecommunications network shall contain the following characteristics:

(1) it shall not cause the loss of user's benefit;

(2) it shall not cause a discrimination, preference or obstacle to other licensees;

(3) the technical specifications at the access point or point of interconnection shall be clearly stated, technically feasible and shall not cause undue burden to the person who requests the access or interconnection of the network;

(4) the duties and responsibilities of the person who requests or provides network access or interconnection shall be clearly stated;

(5) charges for the access or interconnection of telecommunications network shall be set in accordance with the criteria under Section 25 paragraph five;

(6) other characteristics as specified by the Commission.

The licensee who owns the telecommunications network shall send a copy of the contract to the Commission within ten days from the date on which the contract is signed. If the Commission deems that the provisions of the contract do not conform to the characteristics set forth in paragraph one, the Commission shall have the power to order the amendment within the specified period. If the licensee who owns the telecommunications network refuses to amend the contract as ordered by the Commission, the provisions of Section 65 shall apply *mutatis mutandis*. If the person who requests the telecommunication network access or interconnection refuses to amend the contract, it shall be deemed that the contract is void.

Section 28 The licensee shall provide accurate and necessary information for the access or interconnection of the telecommunications network to other licensees who request the access or interconnection of the telecommunications network and shall not take any action that causes the obstruction to normal access or interconnection of the telecommunications network of another licensee.

When there is a change to the telecommunications network that affects the access or interconnection of the telecommunications network, the licensee who owns a telecommunications network shall give notice of such change in advance with a reasonable period of time, but not less than six months.

Section 29 The licensee who owns the telecommunications network shall publicly disclose the contract for the access or interconnection of the telecommunications network in accordance with procedures prescribed by the Commission.

Section 30 In the case where the economic or social conditions change or there is any reason that makes the charge rate for the access or interconnection of the telecommunications network specified in the contract inappropriate, causing an advantage or disadvantage among the licensees, causing either party to bear an unreasonable burden, the licensee who is a party to the contract may request the Commission to adjust the charge rate. In giving an approval, the Commission shall also have due regard to the impact on users.

Section 31 For the benefit of maintaining national security or preventing disasters that may cause damage to the public or carrying out the public interest as a whole, when the Government make a request to the Commission, the Commission shall take action to provide the access or interconnection of the telecommunications network between the licensees and the relevant state agencies. In such case, the licensees shall be obliged to comply with the orders of the Commission.

CHAPTER III

Standards of Telecommunications Networks and Equipment

Section 32 The Commission shall have the power to prescribe that types of telecommunications networks, telecommunications equipment or device used in the telecommunications business that affect the provision of telecommunications services shall have technical standards as prescribed.

The Commission may prescribe that certain types of equipment used in telecommunications networks, telecommunications equipment or device used in telecommunications business shall be tested and certified the conformity to standard before putting into service.

Section 33 The licensee shall maintain, repair and modify the telecommunications network, telecommunication equipment and device used in the telecommunications business in which the licensee uses to provide telecommunications service in order to enable the efficient use and meet the technical standards set forth in the notification issued under Section 32.

Section 34 Type Three licensee shall have engineers with qualifications and the number prescribed by the Commission to supervise the operation of telecommunications services, installation, inspection and maintenance of telecommunication networks, telecommunication equipment and device used in the telecommunications business of the licensee to ensure the conformity to technical standards.

Section 35 The Office shall have the authority to inspect and certify the standards of equipment used in telecommunications networks, telecommunications

equipment and device used in telecommunications business according to the notification of the Commission under the Section 32 paragraph two or in the case where there is a request from any person who wishes to have the standard inspection and certification.

The inspection and certification of standards under paragraph one shall be in accordance with the regulations prescribed by the Commission.

Section 36 Any person who wishes to conduct an inspection and certification of standards shall establish a conformity assessment body of equipment used in telecommunication networks, telecommunications equipment or device used in telecommunications business. The conformity assessment body shall be a juristic person and shall obtain a license from the Commission.

The qualifications of the applicant for the license, the application for the license, the license issuance, the term of the license, the renewal of the license, the license issuance fee and the renewal of the license fee shall be in accordance with the criteria, procedures and conditions prescribed by the Commission.

The conformity assessment body shall have inspection and certification staff with qualifications and the number of staff as prescribed by the Commission.

In permitting the establishment of the conformity assessment body, the Commission may prescribe any conditions as it deems appropriate.

Charges for inspection and certification by licensees under paragraph one shall be in accordance with the rate set by the Commission.

Section 37 The Commission shall have the power to revoke the license to establish the conformity assessment body in the following cases:

(1) the licensee for the establishment of the conformity assessment body lacks the qualifications as prescribed in the notification issued under Section 36 paragraph two;

(2) the conformity assessment body conducts the inspection, reports the inspection or certification in bad faith;

(3) the inspection, the report of inspection or certification is delayed without reasonable reason, causing serious damage to the applicant for inspection;

(4) the conformity assessment body lacks inspection and certification staffs with qualifications or lacks the number of staff as prescribed by the Commission.

The revocation of license under paragraph one shall not affect the certification of standard conformity which was conducted prior to the revocation of license,

except for the certification of standard conformity which was conducted in bad faith, or was not conducted in conformity with the standard prescribed by the Commission. In such case, the Commission may order the revocation of that certification.

In the case where any person suffers from damages from the revocation of certification under paragraph two, if that person did not participate in the certification conducted in bad faith, the conformity assessment body whose license is revoked shall have the duty to compensate for the damages suffered by that person.

Section 38 In the case where the telecommunications network, telecommunications equipment or any other device of the licensee is not functioning, does not operate normally, causes interference with the telecommunications business, or does not comply with the standards prescribed in the notification issued under the Section 32, the Officer shall have the power to order the licensee to correct, modify or suspend the use of the telecommunications network or equipment.

The provisions of paragraph one shall also apply *mutatis mutandis* to the equipment used in telecommunications of the user.

CHAPTER IV Licensee's Rights

Section 39 In supplying the telecommunications services, if the licensee has a reason to set up or erect poles, or lay lines, place ducts or install any associated equipment and it is necessary to exercise the right under the Section, the licensee shall prepare a plan showing the details of directions and boundaries of the setting up or erecting poles, laying lines, placing ducts and the installation of any associated equipment to be proposed to the Commission for approval before proceeding.

Once the Commission has given the approval under paragraph one, the licensee shall have the following rights:

(1) laying lines or installing any associated equipment for the provision of telecommunications services on or along ducts, poles or any building that is used in a similar manner of other licensees or of a state agency or of any utility service provider. Other licensees or the state agency shall not refuse such implementation, but may charge necessary compensation;

(2) setting up or erecting poles, laying lines, placing ducts or installing any associated equipment for the provision of telecommunications services on land which is the public domain of the State. The licensee shall inform the state official in charge of the land in advance and shall comply with the criteria and conditions set forth by that state official;

(3) setting up or erecting poles, laying lines, placing ducts or installing any associated equipment for providing telecommunications services on the land of other persons by making an agreement with the owner or occupier of such land in accordance with the guidelines announced by the Commission.

In the case that the licensee cannot proceed according to paragraph two because of the lack of permission or the unreasonably excessive level of charge or compensation when taking into account the useful conditions, the licensee may request the Commission for the consideration. If the Commission deems that the implementation of the licensee is necessary and inevitable, and will not cause excessive damages to the state agency, the land owner or occupier of the land, or the property owner or property possessor, the Commission shall have the power to notify the use of land or property for that purpose to the state official in charge of the land or property, the land owner or occupier of the land, or the property owner or property possessor not less than thirty days in advance together with the date, time and nature of implementation.

The person who has been notified under paragraph three may lodge a petition expressing that there is unreasonable ground for using land or property for such implementation or such implementation may cause serious damages to the utilization of land or property to the Commission for its decision within thirty days as from the date of receiving informing note. The decision of the Commission shall be final.

When the period notified by the Commission under paragraph three has lapsed and the licensee has paid the compensation for the use of the land or property under Section 40, the licensee shall have the right to use the land or property for the operation under paragraph two, subject to the criteria prescribed by the Commission which shall not cause annoyance or affect the natural conditions and not cause an unreasonable decrease in the use of the land.

Section 40 The licensee shall pay the compensation for the use of the land according to the Section 39 at the amount specified by the Commission.

In the case where the authorized official in charge of the land or property, the land owner or occupier of the land, or the property owner or property possessor does not accept the compensation under paragraph one, the licensee shall deposit that

compensation with the Commission in accordance with the criteria prescribed by the Commission.

The licensee, the land owner or the official in charge of the land who is not satisfied with the compensation as prescribed by the Commission under paragraph one shall have the right to enter an action in the Administrative Court.

Section 41 Upon notifying the state official in charge of the land or property or the owner or occupier of the land in advance according to the criteria prescribed by the Commission, the licensee has the right to stretch lines above or across the land which is the public domain of State or of any other person without consent if such action does not affect the use of that land.

The state official in charge of the land or property or the owner or occupier of the land may notify the licensee to stretch lines in an area that does not affect the use of the land. If any damage is caused from such implementation, they shall have the right to claim damages from the licensee, and the provisions of Section 39 and Section 40 shall apply *mutatis mutandis*.

The provisions of this Section shall also apply *mutatis mutandis* to the implementation of Section 35 paragraph two (1).

Section 42 The licensee may enter the land on which the telecommunications network, poles, lines, ducts or equipment located for the purpose of inspecting, maintaining, repairing or preventing any harm or damage that may occur by giving written notice to the occupier of the land not less than thirty days in advance. Unless in case of an emergency which is necessary to immediately remedy the damage incurred, the licensee may enter the land to take immediate corrective action.

If any damage occurs due to the implementation under paragraph one, the injured person shall be entitled to claim compensation for such damage from the licensee.

Section 43 In the case where the equipment of the telecommunications service user causes telecommunication interference or may cause damage to the telecommunications network or equipment used in the telecommunications business operation of the licensee, the licensee shall inform the user, in writing, to change or modify that equipment within a reasonable period.

In the case where the user fails to comply with the notice under paragraph one and the use of the equipment still causes telecommunications interference or may cause damage to the telecommunications network or equipment used in the business of the licensee, the licensee may temporarily suspend the provision of telecommunications services to the user until the user complies with the notice.

In the case of necessity and compelling, the licensee may immediately suspend the supply of telecommunications service and inform the user later.

Section 44 Any person is prohibited from causing damage, destruction, depreciation in value, or rendering uselessness to the telecommunications network, poles, lines, ducts, transmitters, receivers, or any other equipment used for the supply of telecommunications services, or telecommunications service station.

For the purpose of this Section, the Commission may prescribe in notification the measure for the protection of various objects under paragraph one, as it deems necessary.

CHAPTER V Rights of the User

Section 45 Any person who suffers damage from the provision of telecommunications service of the licensee shall have the right to lodge a complaint to the Commission in writing through the Office.

The complaint under paragraph one shall clearly state the facts. If there is documentary evidence related to the case, it shall be sent together with the complaint.

During the consideration of the complaint by the Commission, if the complainant requests, the Commission shall have the authority to determine any temporary action the licensee shall take in order to remedy the damages to the complainant.

Section 46 The Commission shall complete the consideration of the complaint within thirty days from the date of receiving the complaint by giving the parties the opportunity to clarify the facts and present their evidence. In the case where the Commission considers that the licensee has acted in violation of the laws, licensing conditions, contract for the supply of service or did not comply with good standard of

service, the Commission shall have power to order the licensee for the correction thereof within a specified period.

Section 47 In the case where the user considers that the licensee charges a fee or service charge higher than the maximum rate determined by the Commission under Section 55 or higher than the fees charged to other users of similar nature or types of service, or if the user deems that the fees or service charges are incorrect, the user has the right to request information about their use of the service from the licensee.

The licensee shall notify the user of the information under paragraph one within a reasonable period which shall not exceed thirty days as from the date of request. The licensee shall, if requested by the user, provide a document certifying the correctness of information, and the licensee may charge the user a fee which shall not be in excess of the actual cost and shall be in accordance with the criteria prescribed by the Commission.

Section 48 In the case where there are reasonable grounds to suspect that the licensee has charged a fee or service charge in any manner under Section 47 paragraph one, the user has the right to lodge a complaint with the Commission and the provisions of Section 45 and Section 46 shall apply *mutatis mutandis* to this case.

In considering the complaint under paragraph one, the licensee shall have the duty to prove the facts to confirm the accuracy of the charge or service charge.

Section 49 The user has the right to use their telecommunications equipment to receive services from the licensee.

The charge for the use of the service user's telecommunications equipment with the service system of the licensee shall be in accordance with the rates and criteria set by the Commission.

In providing telecommunications services, the licensee shall not prescribe the conditions of service by compelling the user to use the telecommunications equipment of the licensee or as determined by the licensee, except for the provision of telecommunications services in any type that is technically necessary to use the telecommunications equipment specified by the licensee. The licensee may specify such conditions only after obtaining the approval from the Commission. Nonetheless, such specification of the type of telecommunications equipment shall not bar the rights of users who can acquire, by themselves, the specified telecommunications equipment in obtaining

the service. In this regard, the licensee shall not refuse the user the supply of or the access to their own service.

Section 50 The Commission shall prescribe measures to protect the service users with respect to personal information, the right to privacy and freedom of communication by telecommunications.

The licensee shall have the duty to comply with the measure prescribed by the Commission under paragraph one.

When it is found that there is a person who violates the rights of users under paragraph one, the licensee or the Commission shall take action to terminate such violation and inform the user without delay.

CHAPTER VI

Telecommunications Service Contracts

Section 51 Any contract between the licensee and the user and any condition in relation to the supply of telecommunications service specified by the licensee including the amendment thereof shall be received a prior approval by the Commission.

The contract and condition that are valid for approval by the Commission shall at least:

(1) contain provision which clearly and fairly defines duties and responsibilities of the licensee and the user;

(2) contain provision in relation to the standard of service supplied by the licensee;

(3) contain provision in relation to the category and scope of the service expense which shall be complete and fair, and also contain provision guaranteeing that there shall be no charges apart from that specified;

(4) contain no provision which limits the user's utilization without reasonable ground;

(5) contain no provision in a manner that causes a discrimination, preference or obstacle to user or unfairness to any party.

When the licensee obtains the approval from the Commission for any contract or condition, the licensee shall have the right to apply such contract or condition to the user.

For the purpose of this Section, the Commission shall have the power to issue a notification to prescribe the standard criteria of contracts and conditions relating to the supply of telecommunications services and may prescribe the exemption of contracts or conditions in any matter from the approval of the Commission.

In the case where there is any law prescribing the criteria for entering into contracts for the supply of telecommunications services for consumer protection, the licensee shall be obliged to comply with such criteria.

Section 52 The licensee shall disseminate to the public the contract format and the imposition of condition for the supply of service according to the procedure prescribed by the Commission and shall display it at a conspicuous place in their office for public verification.

Section 53 In the case where the licensee has advertised guaranteeing the quality standards of its telecommunications services, it is the duty of the licensee to act in conformity with that advertisement.

If the licensee fails to supply the telecommunications services as advertised, the Commission shall have the power to order the licensee to take corrective action to meet the advertisement.

Section 54 Any contract or agreement relating to the operation and provision of telecommunications services as prescribed by the Commission that the licensee intends to enter with a foreign government, international organization and a person or juristic person residing abroad, including the amendment to or cancellation of such contract or agreement, shall be received a prior approval by the Commission, except for regular procurement.

The licensee shall deliver a copy of all contracts or agreements made with foreign governments, international organizations and persons or juristic persons residing abroad in accordance with the criteria set forth by the Commission within thirty days from the date of entering into such contract or agreement, except for the contract or agreement regarding procurement or a contract or agreement that the Commission prescribed in notification for the exemption from the submission.

In the case where the Commission considers that any contract or agreement has been made without the approval under paragraph one or that there is any action different from that approved by the Commission, the Commission shall have the power to order the licensee for the correction thereof in accordance with the criteria and within the

period prescribed by the Commission. If the licensee fails to take action within the specified period, it shall be considered as a ground for revocation of the license.

CHAPTER VII

Fees and Charges in Telecommunications Businesses

Section 55 The Commission shall prescribe the types and maximum rate of fee and charge that the licensee can charge the user according to the nature and type of telecommunications business licensed to operate.

Section 56 Determination of maximum rate of fee and charge under Section 55 shall:

- (1) be a clear calculation method;
- (2) be a fair rate for licensees and service users;
- (3) not be characterized as discrimination, preference or obstacle to the user or any person.

Section 57 Each licensee shall not charge fee or charge in addition to or in excess of the maximum rate prescribed by the Commission under Section 55 and shall not set the rate of fee or charge in a manner that causes a trade barrier which will have the effect on restricting fair competition. In this regard, the licensee shall charge the users the same rate for telecommunications services of the same nature or type.

The Commission may require the licensee to reduce or waive fee or charge for service used to provide information and knowledge for the benefit of promoting public knowledge in accordance with the criteria prescribed by the Commission.

Section 58 The licensee shall not collect any deposit or other payment of a similar nature. The collection of advanced service fees shall comply with the criteria or conditions prescribed by the Commission for the purposes of consumer protection or public interest.⁴

Any violation or non-compliance with this Section by the licensee shall be deemed to cause serious harm to the public interest.

⁴ Section 58 paragraph one is amended by the Telecommunications Business Act (No. 2), B.E. 2549 (2006).

The provisions of this Section shall apply to telecommunications service contracts made under this Act.

Section 59 The licensee shall provide for the dissemination to the public, and shall inform all users the rates of fee and charge in accordance with the procedure prescribed by the Commission. Such rates shall be displayed at a conspicuous place in their office for public verification.

As it deems appropriate, the Commission may prescribe that the licensee shall provide a notification system on fee and charge to inform the user prior to each usage, upon request. Such service shall be free of charge.

Section 60 In the case where the economic or social conditions change or there is any reason that causes the maximum rate of fee or charge determined by the Commission in accordance with the Section 55 inappropriate, causing an advantage or disadvantage among the licensee or causing the user to bear an undue burden, the Commission may consider adjusting the rate of fee or charge to be appropriate.

CHAPTER VIII

Regulatory Enforcement

Section 61 In order to perform duty under this Act, the Officer shall have the authority and duties as follows:

(1) enter the building or place of business of the licensee between sunrise and sunset or during the business hours of such place to inspect the business, books of account, documents, evidence or related information, including any act that may violate the provisions of this Act or fail to comply with the provisions of the license;

(2) address a writing to summons any person to give a statement or to submit any documents or objects for consideration;

(3) investigate and collect facts and report to the Commission in the case where the licensee has committed an offense or caused damage as a result of failure to comply with this Act or with the prescribed licensing conditions.

In the performance of the duties of the Officer under paragraph one, the person concerned shall facilitate such performance as appropriate.

Once having entered and investigated according to paragraph one and such investigation has not been completed, the Officer may carry out the investigation after sunset or outside the business hours of the place.

The performance of the duties of the Officer under this Section shall be in accordance with the criteria prescribed in the notification by the Commission. Such notification shall indicate the position of the Officer who will exercise the authority and duties under this Section and indicate the reasons and necessity for the right to exercise the authority and duties under this Section in each of the case.

In the performance of their duties under this Act, the Commissioners and Officers shall be officers under the Criminal Code.

Section 62 In the performance of duties, the Officer shall present their identity card to the person concerned.

The identity card of the Officer shall be in accordance with the form prescribed by the Commission.

Section 63 In the event of an emergency or necessity to maintain public order, national security or economic stability or to protect the public interest, the Commission may order the Officer to take possession of and use the devices and equipment of the licensee for the operation, or authorize a state agency to temporarily take charge of such operation, or order the licensee or their employees to take certain action until the end of such emergency or necessity.

In the performance of duties under paragraph one, if the Officer has caused damages to the licensee, that licensee shall, on justifiable ground, have the right to claim for compensation for such damages from the Office.

CHAPTER IX

Administrative Enforcement

Section 64 In the case where it appears to the Secretary General that the licensee has violated or failed to comply with the Section 9 paragraph five, Section 11, Section 12 paragraph two or paragraph three, Section 13 paragraph two, Section 15, Section 17, Section 18, Section 20, Section 22, Section 23, Section 24, Section 25, Section 26 paragraph two, Section 27, Section 28, Section 29, Section 33, Section 34, Section 38,

Section 45 paragraph three, Section 46, Section 49, Section 50, Section 51, Section 52, Section 53, Section 54, Section 56, Section 57, Section 58 or Section 59, the Secretary General shall have the power to order the licensee to terminate the violation, to carry out ratification and improvement, or to perform action correctly or appropriately within a specified period of time.

Section 65 In the case where the licensee who has been ordered by the Secretary General under the Section 64 is not satisfied with the said order, he or she shall have the right to appeal to the Commission within fifteen days as from the date of receiving such order. The decision of the Commission shall be final.

Section 66 In the case where licensee fails to comply with the order of the Secretary General under the Section 64 and the appeal period under Section 65 has lapsed, or the Commission decides to uphold the order of the Secretary General, when the Secretary General has issued a warning letter and there is no action taken to comply with the order, the Secretary General shall consider imposing an administrative fine in accordance with the law on administrative procedures, which shall not be less than twenty thousand Baht per day.

In the case where the licensee still neglects to act in the correct manner or violates the license suspension order, or in case of serious damage to the public interest, the Commission shall have the power to suspend or revoke the license.

The stipulation about which offense is subject to the license suspension or license revocation shall be in accordance with the notification prescribed by the Commission.

CHAPTER X

Penalties

Section 67 Any person who operates a telecommunications business or uses a frequency spectrum in a telecommunications business operation without permission shall be liable to the following penalties:

(1) if the offense is a business operation which requires Type One License, that person shall be liable to a fine not exceeding one hundred thousand Baht;

(2) if the offense is a business operation which requires Type Two License, that person shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding one million Baht or both;

(3) if the offense is a business operation which requires Type Three License, that person shall be liable to imprisonment for a term not exceeding five years or a fine not exceeding ten million Baht or both.

In the case where the court gives a judgment declaring that the offender is guilty under this Act, the court shall order to forfeit all equipment, devices and any object used in committing the offense.

Section 68 Any licensee who expands the provision of service without permission under Section 14 shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding six hundred thousand Baht or both.

Section 69 Any licensee who violates Section 21 shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding six hundred thousand Baht or both, and in the case of repeated violation, the penalty shall be double.

Section 70 Any licensee who fails to comply with the order of the Commission under Section 31 shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding six hundred thousand Baht or both.

Section 71 Any person who inspects or certifies the standards of equipment used in telecommunications without permission in accordance with Section 36 shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding fifty thousand Baht or both.

Any licensee who is authorized to establish a conformity assessment body and fails to comply with the conditions prescribed by the Commission under Section 36 paragraph four shall be liable to a fine not exceeding ten thousand Baht.

Section 72 Any person who violates Section 44 paragraph one but does not result in the malfunction of the telecommunications system shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding one hundred thousand Baht or both.

Section 73 Any person who damages, destroys, depreciates or renders useless to sign, buoy, or any other object set up for the protection of the telecommunications system in accordance with the measures prescribed by the Commission under Section 44 paragraph two shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding four hundred thousand Baht or both.

Section 74 Any person who commits an act of illegal interception, utilization or disclosure of message, information or any other data communicated via telecommunications shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding four hundred thousand Baht or both.

Section 75 Any person who fails to facilitate an Officer who performs his duties under Section 61 paragraph one (1) or fails to give a statement or not submit any documents or objects as summoned in writing by the Officer under the Section 61 paragraph one (2) shall be liable to imprisonment for a term not exceeding one month or a fine not exceeding ten thousand Baht or both.

Section 76 Any person who obstructs the performance of the duties of an Officer under Section 63 paragraph one shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding one hundred thousand Baht or both.

Section 77 The Commission shall have the power to settle all offenses by assessing fine under this Act for which the penalty is the imprisonment for a term not exceeding six months. In this regard, the Commission may appoint a sub-committee to settle the offense on its behalf, and may prescribe the settlement criteria or any condition for the performance of duties of the sub-committee.

In the case where the commission of the offense is appeared to an inquiry official and the offender consents to be settled, the inquiry official shall, without delay, deliver the matter to the Commission for the settlement of such offense.

When the offender has paid the fine under the settlement, the case shall be considered settled in accordance with the Criminal Procedure Code.

Section 78⁵ In the case where the offender is a juristic person, if the commission of an offense by a juristic person arises from the orders or actions of a director, manager, or any person responsible for the operations of the juristic person, or in the case where such person has a duty to issue orders or take action and fails to do so, thereby causing the juristic person to commit the offense, that person shall also be liable for the penalty prescribed for such offense.

Transitory Provisions

Section 79 The Commission shall issue the telecommunications business operation licenses under this Act to the Communications Authority of Thailand and the Telephone Organization of Thailand according to the nature and type of business operations, the scope of services and the rights to provide telecommunications services which are under the responsibility of the Communications Authority of Thailand and the Telephone Organization of Thailand on the effective date of this Act no later than one hundred and eighty days from the date on which the Commission prescribes the establishment of the licensing criteria under Section 8.

In issuing a license under paragraph one, the Commission shall prescribe conditions related to business operations of the Communications Authority of Thailand and the Telephone Organization of Thailand as appropriate, taking into account the interests of the people who are currently using services and the development of quality and efficient services or any other matter to achieve the objectives of this Act.

The Communications Authority of Thailand and the Telephone Organization of Thailand shall notify the Commission the details of information related to their telecommunications business operations within thirty days as from the date this Act comes into force.

While the license under paragraph one has not been obtained, the Communications Authority of Thailand and the Telephone Organization of Thailand shall be able to continue their telecommunications businesses operation.

⁵ Section 78 is amended by the Act Amending the Law on Criminal Liability of Representatives of Juristic Persons, B.E. 2560 (2017).

Section 80 In operating the telecommunications business of the Communications Authority of Thailand or the Telephone Organization of Thailand licensed under Section 79, if those agencies have already granted permit, concession or contract to any person who has been telecommunications business operator before the effective date of this Act, that person shall have the right to continue the telecommunications business operation within existing scope and rights under such permit, concession or contract until their termination.

In operating the telecommunications business of the person who has been granted permit, concession or contract under paragraph one shall be subject to the criteria under this Act and in accordance with the conditions prescribed by the Commission on the basis of free and fair competition. In this regard, such person shall be deemed to have the same rights, duties and liabilities as the licensee under this Act. In the case of any offense under this Act that constitutes grounds for the Commission to consider revoking a license, if the offense is committed by a person granted permits, concession or contract, the Commission shall have the authority to order the revocation of such permit, concession, or contract.

Entering into an agreement to change the terms of permit, concession, or contract without reducing or restricting the right to operate a telecommunications business for the remaining period of permit, concession, or contract shall not be considered as an act that affects the validity of permit, concession, or contract.

In the case where the person granted permit, concession or contract enters into an agreement with the Communications Authority of Thailand or the Telephone Organization of Thailand to change permit, concession or contract to a license under this Act, the Commission shall proceed to issue a license to such person granted permit, concession or contract with the right to operate a telecommunications business under the existing scope of services agreed upon by the parties and within the remaining term of that permit, concession or contract so far as it is not contrary to or inconsistent with the provisions of this Act. The issuance of license shall apply Section 79 *mutatis mutandis*.

The provisions of this Section shall apply *mutatis mutandis* to any person granted permits, concessions or contracts from other state agencies existing on the effective date of this Act.

Section 80/1⁶ For the purposes of the implementation of Section 79 and Section 80, the Communications Authority of Thailand or the Telephone Organization of

⁶ Section 80/1 is added by the Telecommunications Business Act (No. 2), B.E. 2549 (2006).

Thailand shall include a company established by converting the capital of the Communications Authority of Thailand or the Telephone Organization of Thailand into shares of that company pursuant to the law on the state enterprise corporatization in order to operate the telecommunications business.

Section 81 When the Commission has announced the criteria for licensing under Section 8, any person who has been lawfully providing telecommunications services for not less than one hundred and twenty days prior to the notification and is not subject to the provisions of Section 79 and Section 80, if they wish to continue providing such services, shall submit an application for a license under this Act within ninety days from the date of the Commission's notification. During this period, they may continue to provide telecommunications services. The Commission shall complete the consideration of the license application within ninety days from the date of receiving the application.

The provisions of paragraph one shall apply *mutatis mutandis* to cases where the Commission issues a notification specifying additional characteristics and types of telecommunications business after the notification under paragraph one.

Countersigned by:

Police Lieutenant Colonel Thaksin Shinawatra

Prime Minister

Remark :- The reason for the promulgation of this Act is that the Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services Act, B.E. 2543 (2000), which is a law enacted in accordance with Section 40 of the Constitution of the Kingdom of Thailand, stipulates the establishment of the National Broadcasting and Television Commission and the National Telecommunications Commission as independent organizations responsible for assigning frequency spectrum and regulating the sound broadcasting, television broadcasting and telecommunications businesses by giving the National Telecommunications Commission the authority and duty to authorize and regulate the operation of telecommunications business and stipulates the enactment of the law on telecommunications business. Therefore, to comply with the aforementioned law and in accordance with the principles established for telecommunications business operations, which allow for authorization, it is necessary to repeal the law on telegraph and telephone to ensure consistency with the said law. Hence, it is necessary to enact this Act.

Telecommunications Business Act (No. 2), B.E. 2549 (2006)⁷

Section 2 This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Remark :- The reason for the enactment of this Act is that certain types or categories of telecommunications businesses require substantial capital investment in the operations and rely on advanced technology. Currently, there remains a necessity to rely on foreign capital and technology. The requirement that the applicant for a telecommunications business license for Type Two and Type Three shall have at least seventy-five percent of Thai ownership has posed to be a problem and obstacle in raising funds from foreign investors. Furthermore, if a joint venture with a foreign party is pursued, issues would arise due to the foreign ownership restriction, which has prevented both existing and new licensees from developing telecommunications networks or technologies to provide services to the public as efficiently as possible. It is deemed necessary to amend the ownership ratio to facilitate foreign investment. In addition, the prohibition on licensees charging any money characterized as advanced payments, other than deposit fees, may lead to the misunderstanding that advanced service fees are also prohibited, even if not considered as deposit fees. This could affect the provision of telecommunications services that involve

⁷ Government Gazette, Volume 123 /Part 5 Gor, Page 9/20th January B.E. 2549 (2006).

advanced payments, which are popular and have high market growth rates because they provide convenience to users and allow them to control their expenses. Therefore, it is appropriate to only prohibit the licensee to charge deposit fees and other fees resembling deposit fees. Furthermore, as the Communications Authority of Thailand and the Telephone Organization of Thailand had already changed their status under the law on the state enterprise corporatization, this may cause ambiguity in the application of Sections 79 and 80 of the Telecommunications Business Act, B.E. 2544 (2001). It is necessary to define these two entities as companies established by converting capital into shares for the purpose of conducting telecommunications businesses, thereby necessitating the enactment of this Act.

Notification of the Office of the Constitutional Court regarding the Constitutional Court's Ruling that Provisions of Law are in Conflict with or Contrary to the Constitution.⁸

Constitutional Court's Ruling No. 10/2556, dated 10th July 2556 (2013), ruled that Section 78 of the Telecommunications Business Act B.E. 2544 (2001) is in conflict with or contrary to Section 39 paragraph two of the Constitution. Therefore, it is deemed inapplicable under Section 6 of the Constitution.

Act Amending the Law on Criminal Liability of Representatives of Juristic Person, B.E. 2560 (2017).⁹

Section 2 This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Remark :- The reason for the enactment of this Act is that the Constitutional Court has ruled that Section 54 of the Direct Selling and Direct Marketing Act, B.E. 2545 (2002), specifically the part that presumes the managing director, manager, or any person responsible for the operations of a juristic person shall be jointly liable for criminal charges with the juristic person's offense, without evidence of any act or intent related to the juristic person's criminal actions, is in conflict with or contrary to Section 39 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), and is therefore inapplicable under Section 6 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). Subsequently, the Constitutional Court made similar rulings regarding other laws, such as Section 74 of the Copyright Act B.E. 2537 (1994), Section 78 of the Telecommunications

⁸ Government Gazette, Volume 130 /Part 65 Gor/Page 25/19th July B.E. 2556 (2013).

⁹ Government Gazette, Volume 134 /Part 18 Gor/Page 1/11th February B.E. 2549 (2017).

Business Act, B.E. 2544 (2001), Section 28/4 of the Place of Entertainment Act, B.E. 2509 (1966), and Section 72/5 of the Fertilizer Act, B.E. 2518 (1975), all of which were found to be in conflict with or contrary to Article 39 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), and are consequently inapplicable under Section 6 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). Therefore, in order to amend the provisions of these laws and others laws with similar provisions not to be in conflict with or contrary to the Constitution, thereby necessitating the enactment of this Act.

The Order of the Head of the National Council for Peace and Order No. 8/2562, Re: Measures to Address Issues of Continuity of the Commissioners of the National Broadcasting and Telecommunications Commission, and the Expansion of Telecommunications Services for the Purposes of National Security and Public Interest of the Country.¹⁰

Clause 5 This order shall come into force as from the date of its publication in the Government Gazette.

¹⁰ Government Gazette, Volume 136 /Part 172 Ngor/Page 53/8th July B.E. 2562 (2019).

Watinee / Revised
6th June B.E. 2549 (2006)

Panotaporn / Added
19th July 2556 (2013)

Pimmada / Revised
15th February B.E. 2560 (2017)

Prinsinee / Reviewed
16th February B.E. 2560 (2017)

Wichphong / Added
9th July B.E. 2562 (2019)