

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY LAW, 2002**

**Issued by the Information and Communications Technology Authority under
sections 9(3)(c)&(g) and 46(1)&(2) of The Information and Communications
Technology Authority Law, 2002**

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY (DISPUTE RESOLUTION) RULES, 2003**

1. These Rules may be cited as the Dispute Resolution Rules, 2003. Citation
2. (1) For the purposes of these Rules the definitions contained in section 2 of the Information and Communications Technology Law, 2002 shall apply. Definitions
 - (2) In these Rules:
 - “Dispute” means any dispute subject of a Determination Request;
 - “Determination Request” means a written and signed submission made to the Authority by a person including a Licensee and an Interested Party and containing the information set out in Rule 6;
 - “ICTA Law” means the Information and Communications Technology Law, 2002
 - “Infrastructure” means infrastructure as specified by regulation published in the Gazette pursuant to section 48 of the ICTA Law.
 - “Interested Party” means a natural or legal person and includes an individual, corporate entity or potential Licence;
 - “Referring Party” means an Interested Party or Licensee referring a Dispute to the Authority for determination;
 - “Respondent” means a Licensee which has received a notice of a Dispute issued by a Referring Party.
3. These Rules shall come into force on the date of their publication in the Gazette. Commencement
4. (1) A Licensee that is aggrieved by any matter relating to an ICT Network and/or an ICT Service and/or Infrastructure and touching upon another Licensee may by written notice inform that other Licensee of the grievance, specifying the Dispute Referral

nature and circumstances relating to the grievance and the nature of any action sought to be performed or refrained from on the part of the other Licensee. Any Licensee that has received such notice of grievance shall, within five (5) business days following receipt of any such notice, provide a written response setting out its position in respect of the grievance. Any Licensee which has issued a notice of grievance and any Licensee which has received such written notice shall in good faith attempt to resolve any such grievance within thirty (30) days following the date of receipt of the relevant notice.

(2) Where any grievance as set out in Rule 4(1) has not been resolved between the relevant Licensees within a period of thirty (30) days next following the receipt of the relevant notice of grievance, any of the aggrieved or the notified Licensees may submit a Determination Request to the Authority.

(3) In instances other than that referenced in Rule 4(1), where an Interested Party who is not a Licensee wishes to submit a matter to the Authority for some form of resolution, it shall do so by means of a Determination Request.

Good Faith Settlement

5. In instances of a Rule 4(1) dispute, the Referring Party shall not refer any dispute to the Authority unless it has first made good faith and reasonable efforts to settle such dispute directly with the Respondent.

Determination Request

6. The Referring Party shall refer a Dispute to the Authority by submitting a Determination Request which shall include at least the following:

- (a) the identity and address of the Respondent;
- (b) the details of any and all ICT Networks and/or ICT Services and/or Infrastructure to which the issue relates;
- (c) nature and scope of the issues in dispute including those matters that are not in dispute or that have been agreed by the parties;
- (d) an account including dates and copies of any correspondence setting out any efforts that have been taken by either the Referring Party or the Respondent to settle the dispute directly with the Respondent; and the matter(s) which the Referring Party wishes the Authority to determine. the relief sought by the Referring Party;
- (e) if a Rule 4(1) submission, an affidavit signed by a person authorised by the Referring Party attesting to the fact that the matters set out are to that persons knowledge and belief true and accurate.
- (f) if a Rule 4(1) submission, a non-refundable processing fee in the amount \$750 and an undertaking in respect of any and all costs

arising from any process or procedure initiated by the Authority in respect of the Determination Request in the event that it is determined that the Referring Party should pay any part of such costs; and

- (g) if a Rule 4 (3) submission and a corporate entity, a processing fee in the amount of \$100, any part of which may be refunded by the Authority;
- (h) if a Rule 4(3) submission and an individual, the processing fee is nil, unless otherwise determined by the Authority.

7. (1) The Referring Party shall provide a copy of the Determination Request to the Respondent immediately upon submitting it to the Authority. Notice

(2) The Respondent shall file with the Authority a written response within thirty (30) days of receipt of the Determination Request, a copy of which shall be immediately provided to the Referring Party.

8. The Confidentiality Rules shall apply to all dispute resolution submissions made to the Authority. Confidentiality

9. Upon receipt of a Determination Request, the Authority may take one or more of the following actions: Authority Responses

- (a) request such other information from any parties as may be affected by the Dispute as it may deem necessary;
- (b) direct the parties to commence or continue reasonable efforts to resolve the Dispute;
- (c) decline to determine the Dispute on the basis of one or more of the grounds set out in Rule 11;
- (d) issue a notice for a public hearing pursuant to Rule 13 setting out procedures and issues to be addressed. The Authority may issue a notice to other Licensees, Interested Parties and/or the general public advising of the public hearing and inviting submissions on the issues to be addressed;
- (e) appoint a mediator or arbitrator to deal with the Dispute and in such event may establish the terms of reference of any mediator or arbitrator including whether the outcome of any such mediation or arbitration will be binding, the procedures for such mediation or arbitration, any dates by which the mediation or arbitration process will be concluded and guidelines for the allocation of costs as among the parties;

- (f) act as adjudicator of the Dispute including in such event the establishment of its own terms of reference and procedures for any such adjudication including whether the outcome of any adjudication will be binding and any dates by which the adjudication will be concluded and may further make a determination which may include an allocation of costs as among the parties; or
- (g) such other course of action deemed appropriate to resolving the Dispute.

Similar Complaint

10. Where the Authority has received two or more Determination Requests of a similar nature involving one or more of the same parties, it may, at its sole discretion and for purposes of efficiency and consistency, elect to process such Determination Requests as if they were a single Dispute.

Declining to Entertain a Determination Request

11. The Authority may decline at any time to entertain a Determination Request if it determines that:

- (a) the matter is not within the Authority's jurisdiction;
- (b) the subject matter of the Dispute does not sufficiently concern any obligation under the ICTA Law the Electronic Transactions Law, 2000 or other law from time to time in effect in the Cayman Islands which touches upon ICT Networks, ICT Services or Infrastructure, applicable regulations under any such law, any agreement entered into by a licensee or any order of the Authority;
- (c) the Determination Request is vexatious;
- (d) the Determination Request is an abuse of process;
- (e) the Referring Party has not made reasonable efforts to settle the Dispute directly with the Respondent.
- (f) the subject matter of the Determination Request is trivial, misconceived, defective or lacking in substance;
- (g) the determination is unlikely to significantly advance competition in the market;
- (h) the subject matter of the Dispute is not of significant social and/or economic importance;
- (i) the subject matter of the Dispute should continue to be governed by the terms and conditions of an existing contract between the Referring Party and Respondent;
- (j) the subject matter of the Dispute is also the subject of current litigation as between the parties; or
- (k) it is not in the best interests of the Cayman Islands for the Determination Request to be granted.

12. In determining a Dispute, the Authority will act expeditiously, and in doing so may have regard to the subject matter, the need to inquire into and investigate the Dispute, the objectives and functions of the Authority and all matters affecting the merits and fair settlement of the Dispute.

Determinations

13. (1) The Authority may elect to conduct a hearing to assist it in its determination of a Dispute.

Hearings

(2) In conducting a hearing, the Authority shall not be bound by any legal rules of evidence.

(3) A hearing normally will be held in public. If the Authority determines that information to be disclosed in a hearing is "Confidential" as defined in the Authority's Confidentiality Rules, the Authority may direct that any hearing, or part of a hearing, be conducted in private.

(4) The Authority may determine that any submission be verified by affidavit and from whom such verification is required.

(5) The Authority will notify parties in advance of the date and subject matter of any proposed hearing and will afford them a reasonable opportunity to be represented at the hearing.

(6) Parties to the Dispute may elect to be represented at a hearing in whole or in part by a third party, including a legal representative.

(7) Parties to the Dispute will file a written brief twenty one (21) days prior to the hearing outlining their position and include any materials in support of such position.

14. The Authority may choose to entertain submissions or participation in a proceeding, public or otherwise, from Interested Parties, other Licensees or members of the public at large to assist in making a determination concerning a Dispute. In such event, the Authority shall copy parties with the Determination Request and, if received, a copy of the response of the Respondent. Parties shall file their written submissions within thirty (30) days of receipt of notice with the Authority and copy the other parties to the Dispute. The Authority may request further written submissions from some or all parties as deemed appropriate.

Interested Party(ies)

15. A Referring Party may withdraw a Dispute from determination by the Authority before the Authority makes its final determination, provided that it agrees and settles any costs occasioned by the Determination Request or any matter arising from such Request as determined by the Authority.

Dispute Withdrawal

- Experts 16. The Authority may, at its discretion, appoint an independent third party expert to assist it in the resolution of a Dispute. Any costs arising from such appointment may be allocated by the Authority as part of any determination or dispute withdrawal.
- Costs 17. In any proceeding pursuant to these Rules, the Authority may elect to receive submissions as to costs and in such circumstances the Authority may, having regard to the circumstances of the Dispute, award costs to be paid by any party to a Dispute. An award of costs may include any or all of the costs of the Authority, any or all the costs of any Referring Party or any Respondent and any or all costs of any Interested Party or Licensee. In arriving at an award of costs the Authority may request pertinent information from parties such as their legal, consulting and other professional fees. In setting costs the Authority may take into account prevailing market rates for professional services, the reasonableness of any costs incurred and any other relevant matter.
- Authority Decisions 18. (1) All determinations of the Authority, whether preliminary or final, shall be in writing and state the reasons upon which they are based.
(2) The Authority shall make its written determinations available to the public.
- Effect of Determination 19. (1) Subject to sub-subsection (2), a determination of the Authority shall be binding upon the parties.
(2) Nothing in these Rules precludes a party to a Dispute from appealing a determination of the Authority.
- Days 20. All days are calendar days unless otherwise specified. Where a due date falls on a weekend or a statutory holiday, it shall automatically fall on the first working day thereafter.