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## **ALTERNATIVE DISPUTE RESOLUTION (ADR) REGULATIONS**

**IN TERMS OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT 25 OF 2002**

**AS AMENDED – 2017**

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**DEPARTMENT OF COMMUNICATIONS  
DEPARTEMENT VAN KOMMUNIKASIEWESE**

No. R. 1166

22 November 2006

**DEPARTMENT OF COMMUNICATIONS**

**ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT, 2002  
(ACT NO. 25 OF 2002)**

**ALTERNATIVE DISPUTE RESOLUTION REGULATIONS**

The Minister of Communications has under section 69 read with section 94 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), in consultation with the Minister of Trade and Industry, made the regulations in the Schedule.



**Dr Ivy Matsepe-Casaburri  
Minister of Communications**

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**DEPARTMENT OF TELECOMMUNICATIONS AND POSTAL SERVICES**

NO. 1246

10 NOVEMBER 2017

**ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT, 2002  
(ACT NO. 25 OF 2002)**

**AMENDMENT OF THE ALTERNATIVE DISPUTE RESOLUTION REGULATIONS**

I, Dr Siyabonga Cyprian Cwele, Minister of Telecommunications and Postal Services, hereby, in terms of section 69 read with section 94 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), amend the Alternative Dispute Resolution Regulations published in Government Notice No. R. 1166, Government Gazette 29405 on 22 November 2006, as amended by Government Notice No. 1228, Government Gazette 39504 on 11 December 2015, as indicated in the Schedule.



**Dr Siyabonga Cyprian Cwele, MP  
Minister of Telecommunications and Postal Services**

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## SCHEDULE

### ALTERNATIVE DISPUTE RESOLUTION REGULATIONS

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## CHAPTER I Definitions and application

### Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates -

**“abusive registration”** means a domain name which either-

- (a) was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the complainant's rights; or
- (b) has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the complainant's rights;

**“adjudicator”** means a dispute resolution adjudicator appointed by a provider to decide a dispute or appeal;

**“complainant”** means a person who lodges a dispute in terms of these Regulations;

**“day”** means, unless otherwise stated, any day other than Saturday, Sunday or any public holiday in the Republic, and “days” have a corresponding meaning;

**“decision”** means a determination made by an adjudicator in accordance with these Regulations;

**“informal mediation”** means impartial mediation which the Authority conducts to facilitate a resolution acceptable to both Parties;

**“offensive registration”** means a domain name in which the complainant cannot necessarily establish rights but the registration of which is contrary to law, *contra bonos mores* or is likely to give offence to any class of persons;

**“party”** means a complainant or registrant and “parties” has a corresponding meaning;

**“procedure”** means procedural rules in terms of which a dispute is to be conducted as set out in Chapter III;

**“provider”** means a domain name dispute resolution service provider accredited, in terms of Chapter IV of these Regulations, by the Authority and whose name appears on the list of accredited providers published by the Authority on its website;

**“reverse domain name Hijacking”** means using these Regulations in bad faith to attempt to deprive a registrant of a domain name;

**“rights” and “registered rights”** include intellectual property rights, commercial, cultural, linguistic, religious and personal rights protected under South African law, but is not limited thereto;

**“rules”** means the alternative dispute resolution rules provided for in Chapter II;

**“second level domain administrator”** means an entity licensed, or to be licensed, by the Authority to operate a second level domain in the .za domain name space;

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**“supplementary procedure”** includes word and page limits, guidelines, the means for communicating with the provider and the adjudicator and the form of cover sheets adopted by a provider to supplement the procedure;

**“the Act”** means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); and

**“whois database”** means a database of contact details relating to a domain name provided by a second level domain administrator.

#### **Application**

2. (1) These Regulations may include everything provided for under section 69(3) of the Act in connection with a domain name dispute between a complainant and a registrant over the registration and use of an Internet domain name registered in specific second level domains in the .za domain name space, but excluding second level domain names.

(2) Only Internet domain names registered in the .co.za second level domain shall be open to alternative dispute resolution under these Regulations.

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## CHAPTER II Alternative Dispute Resolution Rules

### Dispute resolution service

3. (1) A registrant must submit to proceedings under the rules if a complainant asserts, in accordance with the procedure, that -

(a) the complainant has rights in respect of a name or mark which is identical or similar to the domain name and, in the hands of the registrant the domain name is an abusive registration; or

(b) the domain name, in the hands of the registrant, is an offensive registration.

(2) The complainant is required to prove on a balance of probabilities to the adjudicator that the required elements in subregulation (1) are present.

### Evidence of abusive or offensive registration

4. (1) Factors, which may indicate that the domain name is an abusive registration includes-

(a) Circumstances indicating that the registrant has registered or otherwise acquired the domain name primarily to -

(i) sell, rent or otherwise transfer the domain name to a complainant or to a competitor of the complainant, or any third party, for valuable consideration in excess of the registrant's reasonable out-of-pocket expenses directly associated with acquiring or using the domain name;

(ii) block intentionally the registration of a name or mark in which the complainant has rights;

(iii) disrupt unfairly the business of the complainant; or

(iv) prevent the complainant from exercising his, her or its rights;

(b) circumstances indicating that the registrant is using, or has registered, the domain name in a way that leads people or businesses to believe that the domain name is registered to, operated or authorised by, or otherwise connected with the complainant;

(c) evidence, in combination with other circumstances indicating that the domain name in dispute is an abusive registration, that the registrant is engaged in a pattern of making abusive registrations;

(d) false or incomplete contact details provided by the registrant in the whois database; or

(e) the circumstance that the domain name was registered as a result of a relationship between the complainant and the registrant, and the complainant has -

(i) been using the domain name registration exclusively; and

(ii) paid for the registration or renewal of the domain name registration.

(2) An offensive registration may be indicated if the domain name advocates hatred that is based on race, ethnicity, gender or religion and/or that constitutes incitement to cause harm.

(3) There shall be a rebuttable presumption of abusive registration if the complainant proves that the registrant has been found to have made an abusive registration in three or more disputes in the two years before the dispute was filed.

(4) In order to succeed with rebutting the presumption of abusive registration as contemplated in regulation 4(3), the registrant must prove that the registration of the domain name is not an abusive registration.

**How a registrant may indicate that domain name is not an abusive registration**

5. Factors, which may indicate that the domain name is not an abusive registration, include-

(a) before being aware of the complainant's cause for complaint, the registrant has -

(i) used or made demonstrable preparations to use the domain name in connection with a good faith offering of goods or services;

(ii) been commonly known by the name or legitimately connected with a mark which is identical or similar to the domain name; or

(iii) made legitimate non-commercial or fair use of the domain name;

(b) the domain name is used generically or in a descriptive manner and the registrant is making fair use of it; and

(c) that the registrant has demonstrated fair use, which use may include web sites operated solely in tribute to or fair criticism of a person or business: Provided that the burden of proof shifts to the registrant to show that the domain name is not an abusive registration if the domain name (not including the first and second level suffixes) is identical to the mark in which the complainant asserts rights, without any addition.

**Selection of provider**

6. A complainant must select the provider from among those approved by the Authority by submitting the dispute to that provider in the manner set out in these Regulations.

**Dispute procedure**

7. The procedure in Chapter III prescribes the process for initiating, conducting and concluding a dispute."

**Involvement in disputes**

8. The Authority and second level domain administrators may not participate in the administration or conduct of any dispute before an adjudicator, except as specifically required in terms of these Regulations.



9. (1) The possible decisions pursuant to a dispute before an adjudicator are limited to -
- (a) in the case of abusive registrations the refusal of the dispute or the transfer of the disputed domain name to the complainant;
  - (b) in the case of offensive registrations the refusal of the dispute or the deletion and prohibition of the domain name from future registration;
  - (c) a refusal of the dispute as the dispute constitutes reverse domain name hijacking;
  - (d) cancellation of the disputed domain name as contemplated in subregulation (3).

(2) If three disputes from a Complainant were refused within a period of two years based on reverse domain name hijacking, the provider will not accept any further complaints from the complainant for a period of two years from the date of the last decision, except on good cause shown.

(3) In the case of abusive registrations, the cancellation of the domain name may be considered by the adjudicator when the complainant and a third party have rights or registered rights and it is a more appropriate remedy than the refusal or transfer of the domain name.

#### Notification and publication

10. A provider must communicate a decision to the parties in accordance with the procedure and must provide the decision to the Authority for publication on its website.

#### Appeal, availability of Court proceedings, implementation of decision and repeat disputes

11. (1) Nothing done in terms of these Regulations prevents any party from litigating on any related matter in the High Court of the Republic of South Africa.

(1A) Any party that institutes legal action on any related matter in the High Court of the Republic of South Africa must inform the second level domain administrator in writing either by facsimile, registered post or courier.

(2) If an adjudicator decides that a disputed domain name should be transferred to the complainant, the provider must communicate the decision to the second level domain administrator to be implemented as contemplated by regulation 30(4).

(3) A second level domain administrator must implement the decision, as contemplated by regulation 30, unless the second level domain administrator has been informed as contemplated in subregulation (1A) that either party has commenced legal action in the High Court of the Republic of South Africa concerning the domain name.

(4) If the second level domain administrator learns that legal action has commenced, it may not implement the adjudicator's decision, and the second level domain administrator must not take further action until it receives -

- (a) proof of a resolution or settlement between the parties;
- (b) proof that the lawsuit has been dismissed or withdrawn; or
- (c) a copy of a Court order.

(5) If a dispute has been decided on a previous occasion it will not, subject to subregulation (6), be reconsidered by an adjudicator and if the adjudicator finds that the dispute is a resubmission of an earlier dispute, he or she shall reject the dispute without a consideration of its merits.

(6) In determining whether a dispute is a resubmission of an earlier dispute, or contains a material difference that justifies a re-hearing, the adjudicator shall consider the question whether-

- (a) the complainant, the registrant and the domain name in issue are the same as in the earlier case;

(b) the substance of the dispute relates to acts that occurred prior to or subsequent to the close of submissions in the earlier case;

(c) if the substance of the dispute relates to acts that occurred prior to the close of submissions in the earlier case, any exceptional grounds for the re-hearing or reconsideration exist, without affecting the integrity of the alternative dispute resolution process;

(d) if the substance of the dispute relates to acts that occurred subsequent to the close of submissions in the earlier dispute, the acts on which the re-filed dispute are based are not, in substance, the same as the acts on which the previous dispute were based.

(7) Subject to regulation 32, either party may appeal a decision under these Regulations.

(8) An appeal panel shall consider appeals on the basis of a full review of the matter and may review procedural matters.

(9) The Authority may refer questions of interpretation of these Regulations to the appeal panel: Provided that a decision rendered as a result of the Authority's referral will not affect any previous decision made in terms of these Regulations.

(10) The Authority shall publish decisions of the appeal panel on its website.

#### **Transfers during a dispute**

12. (1) A registrant may not transfer, or delete, or refuse to renew a domain name registration whilst proceedings under these Regulations are ongoing, except as a result of a written settlement agreement that the parties reached and after a copy of the settlement agreement, signed by both parties, has been delivered to the provider who must issue relevant instructions to the second level domain administrator after he or she confirmed the validity of the written settlement agreement between the parties.

(2) A registrant may update technical information, such as name servers, for the domain name provided that such updates do not result in the transfer or deletion of a domain name subject to a dispute.

(3) Where an update of technical information results in the transfer or deletion of the domain name, the registrant shall be liable for any damages that may arise as a result of such transfer or deletion, if the registrant was aware of a dispute lodged under these Regulations in respect of such domain name.

(4) Where a second level domain administrator is informed of a domain name dispute, the second level domain administrator must take steps to ensure that the domain name is not transferred, or allowed to be deleted during the course of the dispute.

#### **Precedent**

13. (1) An adjudicator must consider and be guided by previous decisions made in terms of these Regulations, hereinafter referred to as "national decisions", and decisions by foreign dispute resolution providers, hereinafter referred to as "foreign decisions".

(2) An adjudicator must be guided by national, foreign and international law.

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(3) An adjudicator must provide in his or her decision the full reference to national and foreign decisions as well as national, foreign and international law that he or she considered.

**Amendment of Rules**

14. If the rules have already been invoked by the submission of a dispute to a provider, then the version of the rules in effect at the time it was invoked applies to the dispute.

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## CHAPTER III Alternative Dispute Resolution Procedure

### Communications

15. (1) When a dispute is lodged with a provider, the provider must forward a copy of the dispute to the registrant who is deemed to have been notified of the dispute when the provider -

(a) has sent a hard copy of the dispute to the registrant's postal, physical or facsimile address as displayed on the relevant second level domain administrator's WHOIS database; and

(b) has sent the dispute in electronic format including annexes to the extent available in that form by e-mail to the e-mail addresses of the registrant and his or her technical, administrative, and billing contacts.

(2) The parties can at any time select a preferred means to receive communications from the provider or other parties by notifying the provider in writing.

(3) When sending a communication, the parties and the provider must retain -

(a) a confirmation of transmission, when a communication is sent by facsimile;

(b) a receipt, when a communication is sent by registered post or courier; or

(c) a record of a transmission of a communication that is sent electronically.

(4) Any communication to the provider or the adjudicator must comply with the provider's supplementary procedure.

(5) Communications must be made in the language prescribed in regulation 25 and e-mail communications must be sent in plain text.

(6) A party must update its contact details by notifying the provider and the second level domain administrator in writing within three days of any change.

(7) Unless otherwise communicated to the parties by an adjudicator, a communication sent in terms of the procedure is deemed to have been sent -

(a) if sent by facsimile on the date shown on the confirmation of transmission;

(b) if sent by registered post or courier service on the date marked on the receipt; or

(c) on the date that the communication was transmitted: Provided that the date of transmission is verifiable, if it is transmitted electronically.

(8) Unless otherwise stated, all time periods start to run and shall be calculated from the date of commencement of the dispute as contemplated in regulation 17(2).

(9) When sending a communication -

- (a) an adjudicator must send a copy of the communication to the provider;
- (b) the provider must send a copy of the communication to all the parties to the dispute; and
- (c) a party must send a copy of the communication to the provider.

(10) It is the responsibility of the sender of any communication to retain a record of the transmission.

### Dispute

16. (1) Subject to a provider's supplementary procedure, any person may initiate a dispute by submitting the dispute in paper format, in triplicate and in electronic format to any approved provider: Provided the dispute complies with these Regulations.

(2) Subject to a provider's supplementary procedure, the dispute must -

- (a) request that the dispute be submitted to an adjudicator for adjudication;
- (b) provide the name, physical address (a *domicilium citandi et executandi* within the Republic of South Africa), e-mail addresses and the telephone and fax numbers of the complainant and of any representative authorised to act on behalf of the complainant in the dispute;
- (c) specify a preferred method for transmission of material or communications sent in both paper format and electronic copy;
- (d) specify whether a single or three adjudicators must decide the dispute and specify how payment of the fixed fee has been made with accompanying proof of payment;
- (e) provide detail of the registrant including the name and all contact information of the registrant to enable the provider to send a copy of the dispute to the registrant as provided for in terms of regulation 17(2);
- (f) specify the domain name(s) that is the subject of the dispute, which may be more than one domain name: Provided that the same registrant registered the domain names;
- (g) identify the second level domain administrator with whom the domain name(s) is registered at the time the dispute is filed;
- (h) specify, in detail, the rights on which the dispute is based for the adjudicator to be able to reach a decision and provide full details of the registered right where the complainant relies on registered rights such as trademark rights;
- (i) detail reasons why the domain name, in the hands of the registrant, is an abusive registration or an offensive registration or both, and the remedies sought;

(j) identify any other legal proceedings that have been initiated or terminated relating to any domain name that is the subject of the dispute;

(k) state that the complainant submits to the jurisdiction of the High Court of the Republic of South Africa;

(l) conclude with the following statement followed by the signature of the complainant or his or her authorised representative and be administered as an oath or affirmation by a Commissioner of Oaths, or person holding a similar public office when signing the complaint in a foreign country:

"The complainant certifies that the information contained in this dispute is, to the best of complainant's knowledge, both complete and accurate, that this dispute is not being used for any improper purpose, such as to harass the registrant, and that the assertions in this dispute are warranted under these Regulations and under applicable law.

\_\_\_\_\_  
Signature of Complainant

Date:

Place:

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down her/his answers in his/her presence:

(i) Do you know and understand the contents of the declaration?

Answer:

(ii) Do you have any objection to taking the prescribed oath or affirmation?

Answer:

(iii) Do you consider the prescribed oath or affirmation to be binding on your conscience?

Answer:

I certify that the deponent has acknowledged that she/he knows and understands the contents of this declaration. The deponent utters the following words: "I swear that the contents of this declaration are true, so help me God." / "I truly affirm that the contents of the declaration are true". The signature/mark of the deponent is affixed to the declaration in my presence.

\_\_\_\_\_  
Commissioner of Oaths/ Person holding similar public office

Full Name:

Designation:

Area:

Office held *ex officio*:

Business address:

Date:

Place:

- (m) annex any documentary or other evidence together with a schedule indexing such evidence;
- (n) be accompanied by any evidence available in electronic form; and
- (o) comply with any word limitation imposed by a provider in the provider's supplementary procedure.

#### **Notification of dispute**

17. (1) A provider must ensure that the dispute complies with the provisions of these Regulations, and that the fixed fee has been paid.

(2) If the dispute complies with these Regulations, the provider must forward a copy of the dispute, together with the explanatory cover sheet prescribed by the provider's supplementary procedure, to the registrant in accordance with regulation 15(1), which date shall be the date of commencement of the dispute.

(3) If the provider finds that the dispute does not comply with these Regulations, the provider must immediately notify the complainant of the nature of the non-compliance.

(4) The complainant has five days within which to correct any non-compliance, failing which the dispute is deemed to have been withdrawn, that can only be cured by the filing of a new dispute.

(5) If the provider has not received the fixed fee from the complainant within 10 days of receiving the dispute, the dispute is deemed to have been withdrawn and terminated.

(6) The provider must notify the complainant, the registrant, the relevant second level domain administrator, and the Authority of the date of commencement of the dispute, on such date.

#### **Response**

18. (1) Within 20 days of the date of commencement of the dispute the registrant must submit a response in paper format, in triplicate and in electronic format to the provider.

(2) Subject to a provider's supplementary procedure, the response must -

- (a) respond to the statements and allegations contained in the dispute and detail any grounds to prove that the domain name is neither an abusive registration nor offensive registration as the case may be;

- (b) provide the name, physical address (a *domicilium citandi et executandi* within the Republic of South Africa), e-mail addresses and the telephone and fax numbers of the registrant and of any representative authorised to act on behalf of the registrant in the dispute;
- (c) specify a preferred method for transmission of material or communications sent in both paper format and electronic copy;
- (d) if the complainant has elected a single adjudicator in the dispute, state whether the registrant elects instead to have the dispute decided by three adjudicators;
- (e) identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the dispute;
- (f) conclude with the following statement followed by the signature of the registrant or his or her authorised representative and be administered as an oath or affirmation by a Commissioner of Oaths, or person holding a similar public office when signing the response in a foreign country:

"The registrant certifies that the information contained in this response is, to the best of registrant's knowledge, both complete and accurate, that this response is not being presented for any improper purpose, such as to harass the complainant, and that the assertions in this response are warranted under these Regulations and under applicable law.

\_\_\_\_\_  
Signature of Registrant

Date:  
Place:

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down her/his answers in his/her presence:

(i) Do you know and understand the contents of the declaration?  
Answer:

(ii) Do you have any objection to taking the prescribed oath or affirmation?  
Answer:

(iii) Do you consider the prescribed oath or affirmation to be binding on your conscience?  
Answer:

I certify that the deponent has acknowledged that she/he knows and understands the contents of this declaration. The deponent utters the following words: "I swear that the contents of this declaration are true, so help me God." / "I truly affirm that the contents of the declaration are true". The signature/mark of the deponent is affixed to the declaration in my presence.



**Commissioner of Oaths/ Person holding similar public office**

Full Name:

Designation:

Area:

Office held *ex officio*:

Business address:

Date:

Place:"

(g) annex any documentary or other evidence, together with a schedule indexing such evidence;

(h) be accompanied by any evidence available in electronic form; and

(i) comply with any word limitation imposed by a provider in the provider's supplementary procedure.

(3) If the registrant does not submit a response, the adjudicator must decide the matter based on the dispute contemplated in regulation 16(1) and issue a summary decision in accordance with regulation 9(1)(a) or (b).

(4) A summary decision will, however, only be granted by the adjudicator if the following requirements are met-

(a) that the registrant has been notified of the dispute in accordance with regulation 15(1);

(b) that the complainant has to the reasonable satisfaction of the adjudicator shown that he or she has rights in a name or mark, which is identical or similar to the domain name and, in the hands of the registrant the domain name is an abusive registration, or offensive registration; and

(c) that there are no other factors or circumstances present in the dispute that would unfairly deprive the registrant of the domain name.

(5) A summary decision is regarded as a decision as contemplated in regulation 29.

19. (1) Within five days of receiving the response from the provider, the complainant may submit a reply to the registrant's response to the provider, which the provider must forward to the registrant.

(2) If a reply is submitted it must be submitted in paper and electronic format and comply with a provider's supplementary procedure.

(3) Upon the expiry of the five days, but no later than two days thereafter, the provider will inform the Authority to conduct informal mediation in accordance with regulation 19A.

**Informal mediation**

**19A. (1)** Within two days of being informed by the provider as contemplated in regulation 19(3), the Authority will begin to conduct informal mediation. Informal Mediation will be conducted in a manner which the Authority, in their sole discretion, considers appropriate. No informal mediation will occur if the Registrant does not file a response.

(2) Negotiations conducted between the Parties during informal mediation (including any information obtained from or in connection to negotiations) shall be confidential, that is they will not be shown to the adjudicator. Neither the Authority nor any Party may reveal details of such negotiations to any third parties unless a court of competent jurisdiction orders disclosure, or the Authority or either Party are required to do so by applicable laws or regulations. Neither Party shall use any information gained during mediation for any ulterior or collateral purpose or include it in any submission likely to be seen by any adjudicator or judge in this dispute or any later dispute or litigation.

(3) If the Parties reach a settlement during informal mediation then the existence, nature and terms of the settlement shall be confidential, unless the Parties specifically agree otherwise or a court of competent jurisdiction orders otherwise.

(4) No binding verbal agreements can be reached as part of the informal mediation: any settlement reached by the Parties must be in writing or similar electronic form to be enforceable.

(5) If the Parties reach a settlement and agree that a disputed domain name should be transferred to the complainant, the Authority must communicate the decision to the second level domain administrator to be implemented as contemplated by regulation 30(4).

(6) If the Parties do not achieve an acceptable resolution through informal mediation within five days, the Authority must within two days inform the provider to appoint an adjudicator in accordance with regulation 20, which appointment must be done by the provider within two days.

(7) No Party may ask the Authority (including their directors, officers, employees, contractors, agents) to reveal information or materials gained as a result of any informal mediation under these Regulations unless such disclosure has been ordered by a court of competent jurisdiction. Neither Party shall call the Authority (including their directors, officers, employees, contractors, or agents) as a witness (either in person or to produce documents or other materials) in any proceedings which arise from, or are in connection with, the matters discussed in the mediation.

**Appointment of adjudicator and timing of decision**

**20. (1)** Each provider must maintain and publish a list of adjudicators and their qualifications that is available to the public.

(2) If the complainant or the registrant does not elect three adjudicators, the provider must appoint a single adjudicator, being the next available adjudicator appointed by rotation from its list of adjudicators, within five days following receipt of the response by the provider, or the lapse of the time period for the submission of the response.

(3) The fees for a single adjudicator must be paid by the complainant in accordance with regulation 34.

(4) If either the complainant or the registrant elects to have the dispute decided by three adjudicators, the provider must appoint three adjudicators in accordance with subregulation (6).

(5) The fees for three adjudicators must be paid by the complainant, except where the election for three adjudicators was made by the registrant, in which case the applicable fees will be shared equally between the parties.

(6) In the event that the complainant or the registrant elects to have a dispute decided by three adjudicators, the provider must appoint the next three available adjudicators appointed by rotation from its list of adjudicators.

(7) Once an adjudicator is appointed, the provider must notify the parties of the adjudicator appointed and the date by which the adjudicator must forward a decision to the provider.

#### **Impartiality and independence**

21. (1) An adjudicator must be impartial and independent and must disclose to the provider any circumstances affecting the adjudicator's impartiality or independence before accepting an appointment to decide a dispute.

(2) If, at any stage during the dispute, circumstances arise that may affect the impartiality or independence of an adjudicator, that adjudicator must promptly disclose such circumstances to the provider.

(3) If an adjudicator has disclosed circumstances that may affect the impartiality or independence of the adjudicator, the provider should determine whether an alternate adjudicator should be appointed.

(4) Any party may inform the provider of circumstances that affect or may affect the impartiality or independence of the adjudicator, following which the provider should determine whether an alternate adjudicator should be appointed.

#### **Communication between parties and adjudicator**

22. (1) No party, or authorised representative of a party, may communicate with an adjudicator except as provided for in these Regulations.

(2) All communications between a party and the adjudicator must be sent through the provider in the manner determined by the provider's supplementary procedure.

#### **Transmission to adjudicator**

23. The provider must forward the dispute, response, and reply, if any, to the adjudicator as soon as an adjudicator is appointed.

#### **General powers of adjudicator**

24. (1) An adjudicator must ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.

(2) An adjudicator must ensure that the dispute is handled as expeditiously as possible.

(3) An adjudicator must determine the admissibility, relevance, materiality and weight of the evidence.

(4) An adjudicator must decide a request by a party to consolidate multiple domain name disputes in accordance with these Regulations.

#### **Language of proceedings**

25. (1) Unless otherwise agreed by the parties, the dispute and the response must be prepared in English.

(2) If a party wishes to submit a dispute or response in any other official South African language referred to in section 6(1) of the Constitution of the Republic of South Africa, 1996, other than English, the provider must arrange translation at the expense of that party and suspend proceedings until he or she receives the translation of the dispute or response.

#### **Further statements**

26. In addition to a dispute, a response, and a reply, the adjudicator may request further statements or documents relevant to the dispute, response or reply from either of the parties.

#### **Adjudication**

27. Adjudication will be done on the documentation submitted under these Regulations and no oral submissions will be allowed.

#### **Default**

28. (1) If a party does not comply with any of the time periods established by this procedure or the adjudicator, the adjudicator must proceed to a decision on the dispute.

(2) If a party does not comply with any provision of or requirement under this procedure or any request from the adjudicator, the adjudicator may, in the absence of exceptional circumstances, draw such inferences therefrom, as he or she considers appropriate.

#### **Adjudicator decisions**

29. (1) An adjudicator must decide a dispute in accordance with the principles of law, on the basis of the dispute, response, and reply, if any, and further statements or documents submitted in accordance with these Regulations.

(2) The adjudicator must forward its decision on the dispute to the provider within 14 days of its appointment under regulation 20.

(3) The decision must be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name of the adjudicator.

(4) If three adjudicators consider a dispute, the consentient views of at least two adjudicators shall constitute the decision.

(5) If one adjudicator has a dissentient view, such view should also accompany the decision.

(6) Decisions and dissentient views must comply with the guidelines as to length set forth in the provider's supplementary procedure.

### **Communication of decision to parties**

30. (1) Within three days after receiving the decision from the adjudicator, the provider must communicate the full text of the decision to each party and the Authority.

(2) After five days of notifying the parties and the Authority of the decision, the provider shall forward the decision to the second level domain administrator.

(3) Upon receiving the decision from the provider, the second level domain administrator shall wait a further five days before implementing the decision.

(4) The second level domain administrator shall implement the decision within two days after the expiry of the five-day waiting period.

(5) A decision must be published in full except those parts ruled to be confidential by an adjudicator.

### **Withdrawal, settlement, or other grounds for termination**

31. (1) If, subject to the provisions of regulation 17(3) and 17(4), a dispute is deemed to have been withdrawn, the provider must refund the complainant the fixed fee less any administration costs incurred to date.

(2) If, before the appointment of an adjudicator, the parties agree on a settlement, subject to the provisions of regulation 12(1), the provider must terminate the dispute and refund the complainant the fixed fee less any administration costs incurred to date.

(3) If, after the appointment of an adjudicator but before the adjudicator's decision is made, the parties agree to settle subject to the provisions of regulation 12(1), the adjudicator must terminate the dispute, and the parties shall forfeit all fees paid to date.

(4) If, before the adjudicator's decision is made, it becomes unnecessary or impossible to continue with the dispute, the adjudicator must terminate the dispute, unless a party objects to such termination.

(5) In the event that the dispute is terminated in accordance with subregulation (4), the parties shall forfeit all fees paid to date.

### **Appeal**

32. (1) Either party shall have the right to appeal a decision by submitting a statement of intention to appeal within four days after the receipt of the decision as contemplated in regulation 30(1), together with the appeal fee provided for in regulation 34(3), which must within 15 days be followed by an appeal notice: Provided that only a decision by a single adjudicator, and not a decision of three adjudicators, can be appealed.

(2) A statement of intention to appeal should contain such information to make it clear that an appeal is requested and should not contain the actual grounds or reasons for appeal.

(3) An appeal notice may not exceed 1000 words and must set out detailed grounds and reasons for the appeal.

(4) The provider shall forward the statement of intention to appeal or appeal notice, as the case may be, to the other party within three days of receipt of -

- (a) the statement of the intention to appeal and the appeal fee; or
- (b) the appeal notice.

(5) Within 15 days of receiving the appeal notice from the provider the other party may submit an appeal notice response to the provider.

(6) An appeal notice response may not exceed 1000 words, must set out detailed grounds and reasons why the appeal should be rejected.

(7) Following the filing of an appeal notice response, or the expiry of the deadline to do so, the provider shall appoint an appeal panel of three adjudicators.

(8) The adjudicators on the appeal panel must be impartial and must consist of -

- (a) the chairperson of the provider's group of adjudicators; and
- (b) the next available two adjudicators appointed by rotation from the provider's list.

(9) The appeal panel will not take into consideration any new evidence presented in an appeal notice or appeal notice response, unless they believe that it is in the interests of justice to do so.

(10) Regulation 29 and 30 shall apply *mutatis mutandis* to appeal decisions, except that -

- (a) appeal decisions must be returned by the appeal panel to the provider within 20 days of the appointment of the last adjudicator,
- (b) appeal decisions cannot be subject to any further appeal in terms of these Regulations.

#### **Effect of Court proceedings**

33. (1) If legal proceedings are initiated during a dispute in respect of a domain name that is the subject of the dispute, the provider must suspend the dispute immediately unless an adjudicator has already been appointed in which event the adjudicator must continue to decide the dispute.

(1A) If the adjudicator continues to decide the dispute as contemplated in subregulation (1), the implementation of the decision is subject to the provisions of regulation 11(4).

(2) In the event that a party initiates any legal proceedings during a dispute it must promptly notify the adjudicator and the provider in accordance with these Regulations.

#### **Fees**

34. (1) A complainant must pay a fixed fee in the sum of R10,000-00 to the provider for one adjudicator as contemplated in regulation 20(3) or a fixed fee in the sum of R24,000-00 for three adjudicators to decide the dispute, if the complainant elects to have the dispute decided by three adjudicators, provided that the fixed fee is reduced by 50% in the case of summary decision as contemplated in regulation 18(3).

(2) If a registrant elects in terms of regulation 18(2)(d) to have the dispute decided by three adjudicators, rather than a single adjudicator elected by the complainant, the registrant and the complainant must pay the provider a fixed fee in the sum of R12,000-00 each.

(3) The appeal fee for an appeal under regulation 32 is a fixed fee in the sum of R24,000-00.

(4) A complainant or registrant may approach the Authority, in writing, for financial assistance to lodge a dispute or defend a dispute, which assistance may be considered at the discretion of the Authority taking into account the financial means of the complainant or registrant.

(5) Upon receipt of the fees required in terms of this regulation, the provider must immediately pay 10% of the fees to the Authority, which fees the Authority must use exclusively to fund other complainants and registrants seeking financial assistance, provided that the fees payable to the Authority are reduced to 5% in the case of summary decision as contemplated in regulation 18(3).

(6) If the Parties reach a settlement during informal mediation as contemplated in regulation 19A, no fees are payable.

#### **Exclusion of liability**

35. A second level domain administrator shall not be liable to a party for anything done or omitted in connection with any proceedings under these Regulations: Provided such second level domain administrator has implemented the decision following such proceedings.

#### **Procedure modifications**

36. If the procedure has already been invoked by the submission of a dispute to a provider, then the version of the procedure in effect at the time it was invoked applies to the dispute.

## CHAPTER IV Accreditation of Providers

### Application procedure

37. An applicant for accreditation as a provider must submit an application to the Authority.

### Application

38. (1) Applications should contain -

(a) an overview of an applicant's capabilities and background in providing alternative dispute resolution services, including a description of the applicant's track record of handling the clerical aspects of expedited alternative dispute resolution proceedings, if any;

(b) a list of the names and qualifications of the adjudicators the applicant proposes to include on its published list, a description of the screening requirements applicant has used in selecting adjudicators to be included on its list and an indication whether it intends to make exclusive use of adjudicators who are residents or citizens of the Republic of South Africa;

(c) a description of training and educational measures the applicant proposes to employ for listed adjudicators with respect to domain name disputes and these Regulations;

(d) a commitment by the applicant not to prevent or discourage any of its adjudicators from serving as adjudicators for other providers;

(e) a copy of the applicant's proposed supplementary procedure, if any;

(f) documentation of applicant's proposed internal operating procedures that the Authority must hold in confidence if requested;

(g) a proposed schedule for applicant's implementation of its programme for administering disputes under these Regulations, including a statement of applicant's administrative capacity in terms of number of disputes initiated on a monthly basis;

(h) a statement of any requested limitations on the number of disputes that applicant handles, either during a start-up period or on a permanent basis;

(i) a description of how the applicant proposes to administer disputes, including its interactions with parties to the dispute, second level domain administrators, the Authority, and other approved providers; and

(j) a description of how the applicant intends to publish decisions of adjudicators in disputes it administers and a commitment to provide the Authority with copies of all decisions of adjudicators not published.

(2) In general, the Authority examines the applications to determine whether the applicant has demonstrated an ability to handle proceedings in an expedited, online context in an orderly and fair manner.



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(3) An applicant must-

- (a) have a track record in competently handling the clerical aspects of the procedure and administrative capabilities or must provide a detailed plan for providing those capabilities;
- (b) propose a list of at least five highly qualified neutral persons from the public and private sectors that are experts in intellectual property rights, commercial, cultural, linguistic, religious and personal rights who have agreed to serve as adjudicators;
- (c) show how it shall ensure that the listed adjudicators are trained concerning these Regulations, the technology of domain names, and the legal principles applicable to domain name disputes;
- (d) state whether it intends to make exclusive use of adjudicators who are citizens or residents of the Republic of South Africa;
- (e) indicate a familiarity with international domain name dispute resolution mechanisms and processes and foreign decisions and must indicate its plan to draw on these to provide an international benchmark for a process that is unique to the Republic of South Africa;
- (f) demonstrate in its supplementary procedure that the applicant understands these Regulations; and
- (g) show that both the applicant and its panel of adjudicators are representative of women, disabled and historically disadvantaged individuals where representivity will also be assessed in terms of the Codes of Good Practice for Broad Based Black Economic Empowerment published by the Department of Trade and Industry, as such Codes may be amended or substituted from time to time.