

CAYMAN ISLANDS



Information and Communications Technology Authority Law

INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY (DISPUTE RESOLUTION) REGULATIONS, 2003

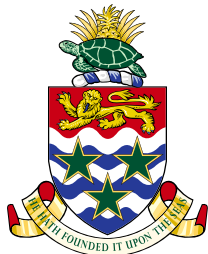
(SL 2 of 2003)

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RESOLUTION) REGULATIONS, 2003

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(SL 2 of 2003)

The Governor in Cabinet, in accordance with section 70 of the Information and Communications Technology Authority Law, 2002, makes the following regulations —

Citation

1. These regulations may be cited as the Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003.

Definitions

2. In these regulations —

“**dispute**” means any dispute which is the 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 regulation 5;

“**interested party**” includes an individual, a corporation or a potential licensee;

“**referring party**” means an interested party or licensee referring a dispute to the Authority for determination; and

“**respondent**” means a licensee which has received a notice of a dispute issued by a referring party.

Dispute referral

3. (1) A licensee which is aggrieved by any matter relating to another licensee may, by written notice, inform that other licensee of the grievance and the notice shall specify —
- (a) the nature and circumstances relating to the grievance; and
 - (b) the nature of any action which the complainant requires the other licensee to perform or refrain from performing.
- (2) Where, pursuant to paragraph (1), a licensee receives a notice of grievance it shall, no later than 5 business days after receiving the notice, provide a written response to the notice.
- (3) Where a licensee has issued a notice of grievance and it has received a written response to such notice in accordance with paragraph (2) it shall, in good faith, attempt to resolve such grievance within 30 days following the date of receipt of the notice by the licensee.
- (4) Where any grievance as set out in paragraph (1) has not been resolved between the relevant licensees within a period of 30 days 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.
- (5) In circumstances other than that referred to in paragraph (1) where an interested party which is not a licensee wishes to submit a matter to the Authority for resolution it shall do so by means of a determination request; and the Authority shall not proceed with such a determination request unless it is satisfied that the interested party and the licensee have made a prior attempt to resolve the matter which is the subject of the request.

Good faith settlement

4. Where a dispute relates to a notice submitted under a regulation 3(1), the referring party shall not submit a determination request to the Authority unless it has first made good faith and reasonable efforts to settle such dispute directly with the respondent.

Determination request

5. A determination request —
- (a) shall include the identity and address of the respondent;
 - (b) shall include the details of all ICT networks or ICT services, if applicable, to which the issue relates;
 - (c) shall set out the issues in dispute and any associated issues that have been agreed by the parties;
 - (d) shall be accompanied by a written account which includes —

- (i) 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;
 - (ii) the matters which the referring party wishes the Authority to determine; and
 - (iii) a clear and concise statement of the relief sought by the referring party;
- (e) where the determination request relates to a grievance under regulation 3 (1) it shall be accompanied by —
 - (i) an affidavit, unless otherwise directed by the Authority, signed by a person authorised by the referring party attesting to the fact that the matters set out are to that person's knowledge and belief true and accurate;
 - (ii) 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
 - (iii) where the referring party is a person who is not an individual or is an individual acting on behalf of a person who is not an individual, a processing fee in the amount of \$100, a part of which may be refunded by the Authority.
- (2) Where a referring party is an individual acting on his own behalf there shall be no processing fee.

Notice

6. (1) The referring party shall provide a copy of the determination request to the respondent on the same date on which it has submitted the determination request to the Authority.
- (2) The respondent shall file with the Authority and provide the referring party with a written response within 20 days of receiving the determination request.
- (3) The Authority may, if the circumstances so require, notify the respondent that the respondent should file a written response within a shorter period of time than that specified under paragraph (2).

Confidentiality

7. The Information and Communications Technology Authority (Confidentiality) Regulations, 2003 shall apply to all dispute resolution submissions made to the Authority.

Authority responses

8. Upon receipt of a determination request, the Authority may take one or more of the following actions —
- (a) request such other information from any person 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 regulation 10;
 - (d) issue a notice for a public hearing pursuant to regulation 12 setting out procedures and issues to be addressed; and the Authority may issue a notice to other licensees, interested parties and the general public advising of the public hearing and inviting submissions on the issues to be addressed;
 - (e) require, if the Authority considers it appropriate and reasonable in the circumstances, parties to proceed on an expedited basis with respect to all matters provided for in these regulations;
 - (f) 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 which shall include —
 - (i) whether the outcome of any such mediation or arbitration will be binding;
 - (ii) the procedures for such mediation or arbitration;
 - (iii) any dates by which the mediation or arbitration process will be concluded; and
 - (iv) guidelines for the allocation of costs among the parties;
 - (g) act as adjudicator of the dispute and, where it decides to do so, it shall establish its own terms of reference and procedures for such adjudication which shall include —
 - (i) whether the outcome of any such mediation or arbitration will be binding;
 - (ii) the procedures for such mediation or arbitration;
 - (iii) any dates by which the mediation or arbitration process will be concluded; and
 - (iv) guidelines for the allocation of costs among the parties; or
 - (h) such other course of action as it considers necessary to resolve the dispute.



Similar complaint

9. Where the Authority has received 2 or more determination requests of a similar nature involving one or more of the same parties it may, for reasons of efficiency and consistency, elect to deal with such determination requests as if they were a single dispute.

Declining to entertain a determination request

10. The Authority may decline at any time to deal with 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 *Information and Communications Technology Authority Law 2002*, the *Electronic Transactions Law (2003 Revision)*, any other law in effect in the Islands or any agreement entered into by a licensee or any order of the Authority which deals with or relates to ICT networks, ICT services or interconnection and infrastructure sharing;
 - (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 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 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 court litigation as between the parties; or
 - (k) it is not in the best interests of the Islands for the determination request to be granted.

Determinations

11. In determining a dispute, the Authority shall act expeditiously, and in doing so may have regard to —
- (a) the subject matter of the dispute;
 - (b) the need to inquire into and investigate the dispute;

- (c) the objectives and functions of the Authority; and
- (d) all matters affecting the merits, and fair settlement of the dispute.

Hearings

- 12.** (1) The Authority may elect to conduct a hearing to assist it in its determination of a dispute.
- (2) In conducting a hearing, the Authority shall not be bound by the rules of evidence governing the admissibility of evidence in judicial proceedings .
 - (3) A hearing shall be held in public unless the Authority determines that information to be disclosed in a hearing is “confidential” as defined in the Information and Communications Technology Authority (Confidentiality) Regulations, 2003 in which case the Authority may direct that any hearing, or part of a hearing, shall be conducted in private.
 - (4) The Authority may require that any submission by any party or any witness to the hearing be verified by affidavit and shall identify the person from whom such verification is required.
 - (5) The Authority shall notify parties in advance of the date and subject matter of any proposed hearing and shall afford the parties and its witnesses, if any, a reasonable opportunity to be heard at the hearing.
 - (6) The 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) The parties to the dispute shall file a written brief no later than 15 days prior to the hearing outlining their position and shall include any materials in support of such position.

Interested parties

- 13.** (1) The Authority may hear submissions or allow participation in a proceeding, public or otherwise, from interested parties, other licensees or members of the public to assist in making a determination concerning a dispute.
- (2) Where the Authority proceeds as in accordance with paragraph (1) the Authority shall send copies to such persons of the determination request and, if received, a copy of the response of the respondent and thereafter such persons shall file their written submissions within 20 days of receipt of notice with the Authority and copy the other parties to the dispute.
 - (3) The Authority may request further written submissions from some or all parties as it considers appropriate.



Dispute withdrawal

- 14.** 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.

Experts

- 15.** The Authority may, in its discretion, appoint an independent third party expert to assist it in the resolution of a dispute and any costs arising from such appointment may be allocated to either party by the Authority as part of any determination or dispute withdrawal.

Costs

- 16.** (1) In any proceeding pursuant to these regulations, the Authority may elect to receive submissions as to costs and the Authority may, having regard to the circumstances of the dispute, award costs to be paid by any party to a dispute.
- (2) An award of costs may include —
- (a) any or all of the costs of the Authority;
 - (b) any or all the costs of any referring party; or
 - (c) any respondent and any or all costs of licensee.
- any interested party or
- (3) An award of costs may also include the cost of an expert retained by the Authority or any party for assistance on a specific dispute.
- (4) In determining costs the Authority may request relevant information from parties such as their legal, consulting and other professional fees and the Authority may take into account prevailing market rates for professional services, the reasonableness of any costs incurred and any other relevant matter.

Authority determinations

- 17.** (1) The 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

- 18.** (1) Subject to paragraph (2), a determination of the Authority shall be binding upon the parties.
- (2) Nothing in these regulations precludes a party to a dispute from appealing a determination of the Authority.

Made by the Cabinet the 4th day of November, 2003

Carmena Watler
Clerk of the Cabinet

