

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 128

2011

**REGULATIONS REGARDING CONSUMER COMPLAINTS**

The Board of the Communications Regulatory Authority of Namibia, in terms sections 90(1) and 131, read with section 129 of the Communications Act, 2009 (Act No. 8 of 2009), hereby publishes these “Regulations Regarding Consumer Complaints”, effective from the date the Act comes into operation as determined by the Minister in terms of section 136(1) of the Act.

**Definitions**

**1.** In these regulations, any word or expression to which a meaning is assigned in the Act, shall have the same meaning, and -

“Act” means the Communications Act, 2009 (Act No. 8 of 2009);

“Complaint(s)” means any complaint -

- (a) alleging non-compliance or breach of a licence;
- (b) alleging non-compliance or breach of a contract;
- (c) alleging non-compliance or breach of the Act or regulations; and
- (d) shall include, but is not limited to, complaints involving the following -
  - (i) billing;
  - (ii) charges and refunds;
  - (iii) service deliver and product delivery;
  - (iv) confidential information;
  - (v) customer services and customer treatment; and
  - (vi) service interruptions and dropped calls.

“Complainant” means any person, natural or juristic, who is a customer or potential customer of a person providing a service contemplated in the Act; and

“Respondent” means the person against whom the Complaint is lodged, either a licensee or a person providing a service without a licence.

**Submission of documents to the Authority**

**2.** In these regulations submit or lodge “in writing to the Authority” means either physically or electronically -

(1) by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;

(2) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;

- (3) by electronic mail to the following address: [cran@cran.na](mailto:cran@cran.na);
- (4) by facsimile to the following facsimile number: +264 61 23 8646; or
- (5) in any other manner or at alternative addresses set out by the Authority from time to time.

### **Applicability**

**3.** (1) These regulations are applicable to all Complaints submitted by Complainants and specifically to -

- (a) Complaints contemplated in terms of section 90(1) of the Act; and
- (b) Complaints contemplated in terms of section 131 of the Act.

### **Submission of complaints by complainants**

**4.** (1) A Complainant may submit a Complaint in writing to the Authority on a form made available by the Authority -

(a) after the Complainant has submitted the substance of the Complaint to the Respondent and after fourteen (14) days, the Respondent has not adequately resolved the matter; or

(b) upon a showing of good cause why the substance of the Complaint was not first submitted to the Respondent.

(2) Complaints shall contain -

- (a) the name and contact details of the Complainant and the name and contact details of the person submitting the Complaint, if different;
- (b) the name of the Respondent, or if the name of the Respondent is unknown, as many identifying details as are available in order to assist the Authority in identifying the Respondent;
- (c) an accurate and concise statement of the facts illustrating the Complaint and demonstrating that the Respondent acted wrongly;
- (d) a clear and concise statement of the specific relief or remedy sought; and
- (e) any other relevant information.

(3) Licensees and persons providing services without a licence must establish clear and simple internal procedures for the resolution of Complaints submitted directly to them by customers and potential customers, which must include provisions ensuring the resolution of Complaints within fourteen (14) days of receipt of a Complaint and notifying complainants of the right to submit a Complaint to the Authority in terms of these regulations if the matter has not been resolved within fourteen (14) days.

(4) Licensees and persons providing services without a licence must maintain records of all internal Complaints and Complaints submitted to the Authority in terms of these regulations, and provide an annual report to the Authority in the format and on the date set out by the Authority, along with a copy of their internal procedures.

**Adjudication of complaints**

**5.** (1) Upon receiving a Complaint, the Authority will within forty-eight (48) hours -

- (a) issue the Complainant with an acknowledgement of receipt of the Complaint and a reference number; and
- (b) if the Complaint is not frivolous, inform the Respondent of the Complaint and provide a copy of the Complaint.

(2) The Respondent must submit in writing to the Authority its response to the Complaint within seven (7) days of receipt of the Complaint. The Respondent must simultaneously provide a copy of the response to the Complainant.

(3) The Complainant may submit in writing to the Authority its reply to the response within seven (7) days of receipt of the Respondent's response. The Complainant must simultaneously provide a copy of the reply to the Respondent.

(4) All written submissions must be clear and concise and conform to any further requirements determined by the Authority from time to time.

(5) The Authority may request additional information or documentation from the Complainant or the Respondent relating to the Complaint, and may stipulate the time periods within and the manner in which such information or documentation should be submitted.

(6) Thereafter, the Authority may either, and in no particular order -

- (a) order mediation in terms of section 132 of the Act;
- (b) initiate an investigation in terms of sections 122 – 127 of the Act;
- (c) conduct oral hearings;
- (d) dismiss the Complaint, either wholly or partly;
- (e) grant the relief sought in the Complaint, either wholly or partly;
- (f) impose any appropriate penalty, including a fine; or
- (g) take any other action or decision, as may be appropriate in the circumstances, or refuse to take any action or decision, as may be appropriate in the circumstances.

**Oral hearings**

**6.** (1) If the Authority considers it necessary or appropriate, it will conduct an oral hearing.

(2) The Authority must invite the Complainant and Respondent and any witnesses, at least seven (7) days prior to the oral hearing, to make oral submissions.

(3) Unless otherwise specified by the Authority, hearings will be open to the public.

(4) The format and agenda of the hearing is at the discretion of the Authority, depending on the nature of the Complaint.

- (5) All oral submissions must –
- (a) include a statement of the name and contact details of the person making the oral submission and the name and contact details of the person for whom the oral submissions is made, if different; and
  - (b) be clear and concise; and
  - (c) conform to any further requirements determined by the Authority.
- (6) If the Authority considers it necessary, it will provide the opportunity for the submission of responses to oral submissions.
- (7) The Authority may request further oral or written submissions, for example, further information or clarification, from the person making the oral submissions, which documentation must be provided to the Authority in the time and the manner set out by the Authority.
- (8) At the conclusion of the hearing, a concise report summarising the oral submissions must be prepared by the Authority as part of the record of the hearing.

### **Decisions of the Authority**

7. (1) The Authority will render a decision in respect of the Complaint within fourteen (14) days.
- (2) After rendering its decision, the Authority will reduce the decision to writing, which must contain –
- (a) concise findings of fact and conclusions of law; and
  - (b) the appropriate order, sanction, relief, or remedy or the denial of the requested order, sanction, relief or remedy.
- (3) In the event the Authority is unable to render a decision within fourteen (14) days, the Authority will inform the Complainant and the Respondent of its inability and the reasons for such inability and what measures are being taken to address the matter urgently. The matter must be addressed within a further maximum period of fourteen (14) days, unless the Authority has identified extraordinary circumstances beyond its reasonable control that makes it impossible to render its decision within the further maximum period of fourteen (14) days.

### **Confidential information**

8. (1) Any person providing information or documentation may designate information as confidential, provided, however, if the Authority is of the opinion that the information is not confidential, it must inform the person that it may withdraw the information, agree that it will not be treated as confidential, or request a hearing on the issue of confidentiality to be conducted in terms of section 28 of the Act.
- (2) Any person making oral submissions may request a closed hearing on the grounds that the submissions are confidential. Closed hearings will be treated as confidential meetings in terms of section 29 of the Act, and the notice of the closed meeting required by section 29(4) must be maintained in the relevant Complaint file.

**Condonation**

9. (1) In the event any party is unable to comply with the times set out in these regulations, they may request from the Authority an extension of time at least seven (7) days prior to the time set out.

(2) The Authority will respond to the request for condonation within two (2) days, and may either grant or deny the request, in its sole discretion, based on, among other things, the nature of the proceeding and the reasons for non-compliance with the times set out.

(3) In the event the Authority grants the request for condonation, the extension of time may not exceed the maximum period of fourteen (14) days calculated from the original time set out.

***Ex parte communications***

10. A person may not communicate with the members of the Board, the CEO or staff members of, or consultants to the Authority to discuss the subject matter of any Complaint, except as provided for herein.

**Record of proceedings**

11. (1) All documents deemed relevant by the Authority to a Complaint must be maintained by the Authority in the most appropriate format.

(2) Except for confidential information, any person may examine the file of a Complaint at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority, and, if practicable on the Authority's website where copies may be downloaded free of charge.

**Publication of decisions**

12. (1) After concluding a Complaint proceeding, the Authority shall inform the Complainant and the Respondent of its decision and deliver a copy of the decision to the aforementioned parties.

(2) The Authority will maintain a public register of its decisions rendered and copies of all decisions, at the head offices of the Authority and if practicable, on the Authority's website.

(3) Any person may examine the register of decisions and copies of decisions at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority, and, if available, on the Authority's website where copies may be downloaded free of charge.

**Reconsideration**

13. (1) The Authority may reconsider any decision made in terms of these regulations, within the time set out in section 31 of the Act.

(2) Any person may request the Authority in writing to reconsider any decision made in terms of these regulations, within thirty (30) days of the publication of the final decision, and the Authority will reconsider such regulation within the time set out in section 31 of the Act.

(3) The Authority may publish its decision on reconsideration without further submissions being received, or it may provide an opportunity for the public to provide further written or oral submissions in a manner stated by the Authority.

**L. JACOBS**  
**CHAIRPERSON**  
**BOARD OF THE COMMUNICATIONS**  
**REGULATORY AUTHORITY OF NAMIBIA**

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