



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 102

2019

NOTICE OF INTENTION TO MAKE GUIDELINES FOR MEDIATION PROCEEDINGS

The Communications Regulatory Authority of Namibia in terms of Section 132 of the Communications, 2009 (Act No. 8 of 2009) read with the Regulations Regarding Procedures for the Adjudication of Disputes published in Government Gazette No. 6466, as General Notice No. 468 of 9 November 2017 publishes this notice of intention to make Guidelines for Mediation Proceedings, which contains the following:

1. A draft of the proposed Guidelines as set out in Schedule 1.

The public may make oral submissions to the Authority on the proposed Guidelines at a time, date and place notified by the Authority by subsequent notice in the Gazette.

The public may also make written submissions to the Authority no later than 30 days from the date of publication of this notice of intention to make Guidelines, in the manner set out below for making written submissions.

Reply comments to written submissions may be submitted to the Authority-

- (a) no later than 15 days after the time for the making of written submissions has lapsed; or
- (b) if the opportunity for the submission of reply comments is published in a subsequent *Gazette*, after the lapse of 14 days from the date of such publication.

All written submissions must -

- (a) contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different; and
- (b) be clear and concise.

All written submissions must be sent or given in any of the following ways:

1. By hand to the head offices of the Authority, namely Communication House, No 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: legal@cran.na;
4. By fax to email to: 0886550852.

F. KISHI
CHAIRPERSON
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

SCHEDULE 1

GUIDELINES FOR MEDIATION PROCEEDINGS

1. INTRODUCTION

The Communications Regulatory Authority of Namibia (hereinafter referred to as CRAN) is a statutory body established in terms of Section 4 of the Communications Act, 2009 (Act No. 8 of 2009). The Authority came into operation on 18 May 2011. CRAN regulates telecommunications services and networks, broadcasting, the use and allocation of radio spectrum and postal services.

Adjudication of Disputes within CRAN's regulatory framework are done in terms of the Regulations Regarding Procedures for the Adjudication of Disputes (hereafter referred as "Adjudication of Disputes Regulations") as published in the Government Gazette No. 6466, General Notice 468 dated 9 November 2017.

Regulation 15 of the Adjudication of Disputes Regulations provides that the Authority may at any time refer a dispute to mediation. The Authority therefore resolved to appoint a Mediators panel to assist in the mediation of disputes.

Mediation is aimed at assisting parties to a dispute that was submitted to the Authority in terms of the Adjudication of Disputes Regulations to reach a voluntary, negotiated resolution with the assistance of the Mediators. The Mediators are independent professionals with skills in mediation of disputes and the Authority will not be involved in the mediation except for administrative support.

These Guidelines must be read together with Regulations Regarding Procedures for the Adjudication of Disputes.

2. REFERRAL OF DISPUTE TO MEDIATION

- 2.1 The Authority's Legal Advice Department (Adjudication, Enforcement and Litigation Unit) is responsible for the Adjudication of disputes.
- 2.2 The Adjudication Unit may at any time refer a dispute to mediation.
- 2.3 The Unit will choose a Mediator from the Panel to mediate the matter between the parties.
- 2.4 Upon receipt of instructions to mediate, the Mediator is required to declare any conflict of interest, in respect of the crux of the dispute or the parties involved.
- 2.5 The Adjudication Unit will coordinate with the parties and the appointed Mediator for a suitable date and set down the matter for the settlement conference.
- 2.6 Upon confirmation with the parties and the Mediator on their availability, the Adjudication Unit will send out a Mediation Notice (Form 1 of these Guidelines) confirming the set down of the matter for the settlement conference.
- 2.7 The mediation must be held at the Authority's premises unless for good reason the Authority directs otherwise.
- 2.8 If one of the parties will require the Mediation Notice, so that the Authority can make the necessary arrangements,
- 2.9 The Adjudication Unit must open a separate mediation file which must be delivered to the appointed mediator at least 5 working days before the date of the mediation.
- 2.10 The mediation file must contain the correspondences exchanged parties as (contemplated in regulation 16), except for the settlement proposal.
- 2.11 The mediation proceedings are confidential between the mediator and the parties and the mediation file should not under any circumstance be given to the Authority.

3. MEDIATION PROCESS

- 3.1 The submitting party is required to submit to the Mediator a settlement proposal.
- 3.2 Thereafter the Respondent must submit to the Mediator a settlement offer.
- 3.3 Copies of the settlement proposal and the settlement offer must not under any circumstances be brought to the attention of the Authority.
- 3.4 Only a person with full settlement authority must attend a mediation convened before the Mediator.
- 3.5 For the purposes of discussing and reaching settlement of a dispute in terms of paragraph 3.4 a party that is -
- 3.5.1 a natural person, must be represented by that natural person or by his or her legal representative;
- 3.5.2 a juristic person, must be represented by a person duly authorised in writing by that juristic person, other than the legal practitioner of record.

- 3.6 A person referred to in paragraph 3.4 must, without reference to any other person not present at the settlement conference, have the necessary authority to make a final and binding settlement regarding any offer or demand.
- 3.7 The settlement proposal and offer and anything discussed during mediation are without prejudice and may not be used by any party in the mediation to which they relate or in any other proceedings.
- 3.8 Any settlement reached between the parties during mediation proceedings will be final and binding on the parties.
- 3.9 If the mediation failed to resolve the dispute, the Mediator must refer the dispute back to the Authority to dispose thereof in terms of the Adjudication of Disputes Regulations.

4. MEDIATION REPORT

- 4.1 Upon the finalization of the settlement conference, the Mediator must submit a mediation report to the Authority within 7 working days.
- 4.2 The mediation report must state whether the mediation proceedings failed or whether it resulted in a settlement agreement.
- 4.3 The mediation report may not disclose any information about the mediation proceedings or if mediation failed, the reason for failure. Provided that the mediation report must disclose failure of the mediation as a result of non-compliance with paragraph 3.4 read with paragraph 3.5.
- 4.4 The mediation report may include recommendations, which recommendation may include but are not limited to -
- 4.4.1 on good cause shown requesting an extension of time for mediation;
- 4.4.2 a request for referral to another mediator with specific expertise.

5. MEDIATION FEES

- 5.1 A mediator is entitled to payment of his or her agreed fee contained in the mediation agreement.
- 5.2 Mediation fees are only due and payable once the mediation report has been submitted to the Authority and within the timelines set out in the mediation agreement.

REFERENCE NO.**CRAM: FORM 1****MEDIATION NOTICE**

In terms of paragraph 2.5 of CRAN's Mediation Guidelines, the Authority will send out a Mediation Notice to the parties and the Mediator.

MEDIATOR:**A. SUBMITTING PARTY**

Name	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address	

B. RESPONDENT

Name	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address (es)	

C. SETTLEMENT CONFERENCE

Date	
Venue	
Interpretation	

D. ISSUE BY CRAN

Name	
Capacity	
Date	
Place	
Signature	

ACKNOWLEDGEMENT OF RECEIPT:

Name	
Date	
Place	
Signature	