



Independent Communications Authority of South Africa

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ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

TERMS OF REFERENCE

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1 CONSTITUTION

The Independent Communications Authority of South Africa (“the Authority”) established an Alternative Dispute Resolution Committee (“the ADR Committee”) as a Standing Committee of Council in terms of section 17 of Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“The ICASA Act”) read with regulation 13 of the End-user and Subscriber Service Charter Regulations as published in Government Gazette No. 39898 of 1 April 2016 as amended, and regulation 4(4) of the Customer Care Standards Regulations applicable to the Postal Service Licensees, 2012 as published in Government Gazette No. 35097 of 1 March 2012 as amended.

2 PURPOSE

The purpose of the ADR Committee is to mediate upon any disputed complaints lodged with the Authority by complainants. The ADR Committee will deal with complaints and disputes which a licensee has failed to resolve or respond to within prescribed turn-around times. The ADR Committee will mediate upon:

- 2.1 Disputed complaints in terms of regulation 12(2) of the End-User and Subscriber Service Charter Regulations; and
- 2.2 Complaints in terms of regulation 4(4) of the Customer Care Standards Regulations applicable to the Postal Service Licensees.

3 COMPOSITION OF THE COMMITTEE

- 3.1 The ADR Committee will consist of two (2) Councillors, four (4) staff members from the Regions and Consumer Affairs Division and one (1) from the Legal Risk and CCC Division.
- 3.2 Council will appoint the Chairperson and the Deputy Chairperson of the ADR Committee.

4 ADDITIONAL SUPPORT TO THE COMMITTEE

- 4.1 The ADR Committee will invite Customer Complaints Officers who referred the complaint to the ADR Committee.
- 4.2 The ADR Committee may invite staff from any Division within the Authority on an ad hoc basis.
- 4.3 Individuals invited to Committee meetings may participate in discussions but do not form part of the quorum of the Committee.

5 FUNCTIONS OF THE ADR COMMITTEE CHAIRPERSON

The Chairperson will:

- (a) chair meetings and hearings of the Committee;
- (b) set rules for the meetings and the hearings;
- (c) maintain order by guiding those in attendance;
- (d) ensure that all those entitled to speak are able to express their views without unnecessary disturbance or interruption; and
- (e) where the Chairperson is unavailable, the Deputy Chairperson will assume the role of the Chairperson.

6 ROLES AND RESPONSIBILITIES OF THE COMMITTEE

- 6.1 The ADR Committee will mediate any dispute arising in respect of:
 - (a) Electronic communications network services;
 - (b) Electronic communications services; and
 - (c) Postal services.
- 6.2 The ADR Committee may, where necessary seek further/additional information from the internal Divisions within the Authority, the Complainant or Licensee.
- 6.3 The Committee Secretary will be responsible for recording and taking minutes for Committee meetings and ADR hearings. The Committee Secretary will share such recordings and minutes with all members of the ADR Committee.

- 6.4 The Project Manager of the Committee will organise and manage the activities of the ADR Committee.
- 6.5 The Committee will submit quarterly reports of all complaints and disputes heard by the ADR Committee to Council for noting.
- 6.6 The Committee will ensure that the functions undertaken, and tasks executed are in accordance with all applicable legislation or regulations.

7 REFERRAL OF COMPLAINTS

- 7.1 Regions and Consumer Affairs Division will refer complaints and disputes to the ADR Committee for mediation through a referral form.
- 7.2 Regions and Consumer Affairs Division will provide the ADR Committee with a case file containing the reference number, summary of complaint and /or dispute and proposed resolution sought.
- 7.3 Complaints that have not been resolved by the affected Licensee within fourteen (14) working days of receipt of the complaint, as required by the provisions of regulation 12 (b) of the End User and Subscriber Charter Regulations and regulation 4(3) (b) of the Customer Care Standards Regulations, will be considered by the ADR Committee for mediation.

8 COMMITTEE MEETINGS

- 8.1 The Chairperson of the ADR Committee will convene the ADR Committee meetings on a quarterly basis or as it may be deemed necessary.
- 8.2 The ADR Committee meetings will be co-ordinated by the Project Manager or Project Leader.
- 8.3 A majority of the committee members shall constitute a quorum for the ADR Committee meetings.

9 PRE-HEARING SETTLEMENT

- 9.1 In the event that the affected parties reach a settlement agreement on any dispute before the scheduled ADR hearing, both parties must confirm the settlement agreement in writing three days before the hearing.
- 9.2 Such agreement must be submitted to the ADR Committee for consideration and recording where thereafter the dispute will be regarded as settled and finalised.

10 HEARINGS OF THE COMMITTEE

- 10.1 The Chairperson of the ADR Committee will convene the ADR hearings on an ad-hoc basis to mediate consumer complaints and disputes referred by the Regions and Consumer Affairs Division.
- 10.2 The ADR hearing will be co-ordinated by the Project Manager or Project Leader.
- 10.3 A majority of the committee members shall constitute a quorum for the ADR Committee hearing.

11 ADR HEARINGS PROCEDURE

- 11.1 The ADR hearings will be held at a place and time determined by the Chairperson of the ADR Committee.
- 11.2 The Committee will provide affected Licensees and complainants with a proposed schedule of ADR hearings prior to the hearings.
- 11.3 The Committee will invite the affected Licensee and Complainant to the ADR hearing at least, ten (10) working days prior to the hearing.
- 11.4 The invitation will indicate the date, time and place, together with the list of cases to be heard on the day of the ADR hearing.
- 11.5 The affected Licensee and the Complainant are expected to confirm their availability to attend the hearing in writing within five (5) working days of receiving the invitation.

- 11.6 The Chairperson will open the hearings and allow the affected parties to make introductions and opening statements. The Chairperson will highlight the role of the ADR Committee to the affected Licensee and Complainant.
- 11.7 The Complainant will be requested to briefly state the nature of their complaint and/or dispute.
- 11.8 The affected Licensee will be afforded the opportunity to respond to the allegations levelled against it by the Complainant.
- 11.9 The Chairperson will thereafter open the matter for deliberation where necessary.
- 11.10 The Customer Complaints Officer who referred the complaint to the ADR Committee will be allowed to clarify any outstanding issues on a complaint where necessary.
- 11.11 In the event that the Customer Complaints Officer is a Committee member, they will be recused and participate as an invited Customer Complaints Officer.
- 11.12 The Committee will ensure that the functions undertaken and tasks executed are conducted in accordance with the Promotion of Administrative Justice Act No. 3 of 2000, and any other applicable legislation or regulations.

12 OUTCOME OF THE ADR HEARING

- 12.1 Where the affected parties reach an agreement on the dispute, the dispute will be considered settled and finalised. The outcome will be communicated to both parties in writing within five (5) working days after the ADR hearing.
- 12.2 Where parties fail to reach an agreement, the ADR hearing will adjourn, then the ADR Committee will make a determination based on the available facts and communicate the outcome to both parties in writing within ten (10) working days after the ADR hearing.
- 12.3 Where the ADR Committee is of the view that, there is possible non-compliance with the relevant provisions of the ICASA Act, the Electronic Communications Act, 2005 (Act No. 36 of 2005), the Postal Services Act, 1998 (Act No. 124 of 1998) or any applicable regulations by a licensee, the Chairperson of the ADR Committee will direct

that the complaint be referred by the Regions and Consumer Affairs Division to the Complaints & Compliance Committee (CCC) for adjudication.