

**EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY
(ECTEL)**

**CONSULTATION DOCUMENT
Electronic Communications (Dispute Resolution) Regulations**

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's **Electronic Communications (Dispute Resolution) Regulations** for its Member States.
2. A copy of the draft regulations for **Electronic Communications (Dispute Resolution) Regulations** is attached to this Consultative Document.
3. The initial comments period will run from **5th July 2016 to 8th August 2016**.
4. The Comment on Comments period will run from **12th August 2016 to 29th August 2016**.
5. Following the Reply Comments period, ECTEL's Directorate will revise and submit the draft Electronic Communications (Dispute Resolution) Regulations to the Council of Ministers for its recommendation for adoption in the ECTEL Member States.
6. All responses to this Consultative Document should be written and sent by post, fax or e-mail to: -
Managing Director
ECTEL
P.O. Box 1886
Vide Boutielle
CASTRIES
St. Lucia
Fax: 1-758-458-1698
Email: consultation@ectel.int

Disclaimer

This consultative document does not constitute legal, commercial or technical advice. The consultation is without prejudice to the legal position of ECTEL's duties to provide advice and recommendations to the Ministers with responsibility for telecommunications and the National Telecommunications Regulatory Commissions.

Suggested Guidelines for Responses to Consultation

In order to reduce administrative lags in ECTEL's limited consultation process and to enable a reasonable degree of transparency by sharing of views submitted, ECTEL hereby recommends that parties desirous of making contributions to the attached consultation follow the procedures outlined below.

- 1) Responses to consultations should be clearly labeled as a response to the particular ECTEL consultation and correctly referenced by title.
- 2) Documents should contain; the Name of Party/Licensee/NTRC commenting, address, telephone, fax number and email contacts of commentary author or corporate officer(s) responsible for the document. This information will enable ECTEL to clarify any comments where necessary, or to facilitate follow-up dialog by ECTEL where required.
- 3) Where specific recommendations require it, commenting parties should indicate clearly via a "Yes" or "No" response, whether they concur or disagree with the recommendation and provide explanations/reasons for each response.
- 4) Where parties have no view or interest in expressing a view on a specific recommendation, parties should indicate "no comment" and number appropriately.
- 5) Responses/comments to specific recommendations should be double spaced and numbered in sequence with the recommendation. Where comments are extensive, paragraphs should be numbered. Pages should be numbered.
- 6) Commenting parties should avoid making comments in the form of tracked changes to consultation documents.
- 7) Where possible, comment documents should be submitted in PDF format.
- 8) Where possible, parties should make explicit reference to academic articles, legislative provisions in other jurisdictions, or other sources relied on, and should provide copies of these together with comments. Accurate citations of resources relied on will suffice if copies cannot be provided.
- 9) If relevant, parties commenting on specific provisions of legal language should propose alternative language where possible. Such language should be appropriately highlighted and double spaced. Parties should avoid proposing alternative language in tracked changes to the consultation document.

- 10) Comments may be submitted via letter, e-mail or fax, but should be submitted via one method only. Only comments submitted via e-mail may be acknowledged.
- 11) Commenting parties should expressly indicate or highlight which parts of comment documents contain commercially sensitive or confidential information that should not be published.

ECTEL reserves the right to publish all the responses received to the consultation and provides no undertakings to refuse to publish such comments where requested, on its website or otherwise.

ECTEL is grateful to those parties adopting the recommended guidelines for submitting comments to this consultation.

1. INTRODUCTION

The Eastern Caribbean Telecommunications Authority (ECTEL) was established by Treaty signed by five Eastern Caribbean States, the Commonwealth of Dominica, Grenada, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines on 4th May 2000. This Treaty established ECTEL as a regional body with legal personality to promote open entry market liberalization and competition in telecommunications of the Contracting States.

In furtherance of this objective and by virtue of the purposes of ECTEL under Article 4, the functions of ECTEL under Article 5 of the Treaty, section 40, and the Second Schedule, Parts 1 and Part 2 of the Telecommunications Act 2000, ECTEL has embarked upon a revision of its legislation. This review commenced in 2009 with a public consultation on a new Bill to govern telecommunications referred to as the EC Bill. The EC Bill was revised based on that first consultation and submitted for public consultation again in October 2015. The changes to Dispute resolution in the revised draft Bill mandate that revision of the current Dispute Resolution Regulations. ECTEL is therefore submitting the following Electronic Communications (Dispute Resolution) Regulations for public consultation.

This document reflects how the current Dispute Resolution Regulations will change to complement the EC Bill.

2. EXPLANATORY NOTES OF REVISED DRAFT ELECTRONIC COMMUNICATIONS (DISPUTE RESOLUTION) REGULATIONS

- 1) The EC Bill has removed of the Tribunal from the Commission. Therefore, the role of the Tribunal will be handled by an independent body, thus separating the investigative arm from the adjudication.
- 2) All references to Tribunal under the present Telecommunications (Dispute Resolution) Regulations, including the reference in the interpretation section of the regulations is removed under the proposed Draft Electronic Communications (Dispute Resolution) Regulations. The word "Tribunal" is to make reference to the Tribunal under the proposed EC Bill.
- 3) There were changes made to Regulation 2 in the Draft Electronic Communications (Dispute Resolution) Regulations that are different from the Telecommunications (Dispute Resolution) Regulations. The following definitions from the Telecommunications (Dispute Resolution) Regulation were deleted:
 - i. "alternative dispute resolution process"
 - ii. "Commission"
 - iii. "Commission complaint tracking number"
 - iv. "Commission Complaint Record Register"
 - v. "complaint"
 - vi. "complaint"
 - vii. "complaint telecommunications provider"
 - viii. "conciliation"
 - ix. "disputes between members of the public and telecommunications providers"
 - x. "Dispute Resolution Order Register"
 - xi. "dispute resolution order"
 - xii. "ECTEL"
 - xiii. "licensee"
 - xiv. "Minister"
 - xv. "parties"
 - xvi. "person"
 - xvii. "respondent telecommunications provider"
 - xviii. "retail customer"
 - xix. "statement of complaint"
 - xx. "telecommunications provider complainant tracking number"
 - xxi. "Telecommunications Provider Complaint Record Tracking System"
 - xxii. "Telecommunications Provider Complaint Record Register"
 - xxiii. "Treaty"
- 4) In Regulation 2, the proposed Draft Electronic Communications (Dispute Resolution) Regulations included a definition for "Register"

5) In Regulation 2, there was a name change for the definition for “Commission Complaint Record Tracking System.” In the proposed Draft Electronic Communications (Dispute Resolution) Regulations, it is now called “complaints tracking system.”

6) Part I of the proposed Regulation-**COMPLAINTS**

- i. There is a new provision, which speaks to the **Form of a complaint** (regulation 4).
- ii. The provision related to **format for presentation of information** under the present regulations (regulation 23) has been replicated in the proposed regulation as regulation 5.
- iii. Regulation 6 in the proposed regulation addresses **form of notice of discontinuance**. This regulation was modified from the current regulations 10 (1). The remaining regulations under the current regulation 10 were deleted.

7) Part II of the proposed Regulation-**MEDIATION AND ARBITRATION**

- i. **Duties of the Commission relating to mediation**, which is presently regulation 18, is replicated in the proposed regulation as regulation 7.
- ii. The proposed regulation has included a regulation in relation to the **mediation process** (regulation 8).
- iii. Part IV of the present regulation in relation to **Arbitration** is replicated fully in the proposed regulation, with slight modifications in relation to the referencing of the Schedule in the proposed regulation 12 (2) and the name change from “Dispute Resolution Order Register” to “Complaints Tracking System” in the proposed regulation 14.
- iv. The provision related to **responsibility of mediator or arbitrator**, which is presently regulation 17 is now regulation 15 under the proposed regulation. The proposed section deletes reference to “alternative dispute resolution personnel” and replaces it with “mediator or arbitrator.” In addition, the proposed regulation 15 (f), reference to the “Commission or Tribunal” is deleted and in regulation 15 (h), reference to “ECTEL” is deleted.
- v. The provision related to **non-discrimination and transparency**, which is presently regulation 19 is now regulation 16 under the proposed regulation. It is to be noted that reference to “alternative dispute resolution process” has been replaced with “mediation or arbitration process” in the proposed

- regulation 16 (1). Additionally, in the proposed regulation 16 (2), reference to the sections in the principal Act has been deleted.
- vi. The provision related to **responsibility of parties in mediation or arbitration**, which is presently regulation 20 is now regulation 17 under the proposed regulation. It is to be noted that in the proposed regulation 17 (3), reference to sections in the principal act has been deleted.
 - vii. The provision related to **burden of proof**, which is currently regulation 22 is now regulation 18 under the proposed regulation.
 - viii. There is a new provision related to the **registration of information** (regulation 19) under the proposed regulation.

8) Part III of the proposed Regulation-**TRIBUNAL**

- i. The provision related to **guidelines for resolving disputes** has been modified in the proposed regulation 20. Therefore, the proposed regulation has deleted the regulation 33 (1) and (2) under the current regulations. In addition, reference to the Commission has been deleted in the proposed regulation 20.
- ii. Regulation 21 which addresses **notice of appearance** in the proposed regulation is replicated from section 6 under Part 3 of the Second Schedule of the present regulation. There is one slight modification in that in the proposed regulation 21 (1), the respondent has been given 18 days to present a Notice of Appearance, which differs from the current 10 days.
- iii. The regulation which addresses **notice of hearing** is now regulation 22 in the proposed regulation. This regulation is currently regulation 8 under Part 3 of the Second Schedule of the present regulation. Consequently, the reference to the Schedules in the regulation was revised to be in compliance with the proposed regulation.
- iv. The regulation which addresses **hearing and determining issue on bringing or contesting complaints** is now regulation 23 in the proposed regulation. This regulation is currently regulation 9 under Part 3 of the Second Schedule of the present regulation.
- v. The regulation which addresses **Pre-Hearing review** is now regulation 24 under the proposed regulation. This regulation is currently regulation 10 under Part 3 of the Second Schedule of the present regulation. However, it is noteworthy that the proposed regulation has deleted the regulations 10 (2) and (3) under Part 3 of the Second Schedule of the present regulation.

- vi. The regulation which addresses **Representations** is now regulation 25 under the proposed regulation. This regulation is currently regulation 11 under Part 3 of the Second Schedule of the present regulation.
- vii. The regulation which addresses **evidence and witnesses** is now regulation 26 under the proposed regulation. This regulation is currently regulation 12 under Part 3 of the Second Schedule of the present regulation. Additionally, it is to be noted that there have been slight modifications to the proposed section e.g. the inclusion of a Form, which relates to the ability to issue a summons to compel the attendance of witnesses under section 112 of the proposed EC Bill.
- viii. The regulation which addresses **record of decision** is now regulation 27 under the proposed regulation. This regulation is currently regulation 13 under Part 3 of the Second Schedule of the present regulation. The proposed regulation was modified by adopting parts of regulations 13 (2) and (3) under the current regulation.
- ix. The regulation which addresses **orders of the tribunal** is now regulation 28 under the proposed regulation. This regulation is currently regulation 15 under Part 3 of the Second Schedule of the present regulation. The current regulation has been duplicated with the exception of regulation 15 (5) under Part 3 of the Second Schedule of the present regulation.
- x. The regulation which addresses **extension of time** is now regulation 29 under the proposed regulation. This regulation is currently regulation 16 under Part 3 of the Second Schedule of the present regulation. There is a slight modification to this regulation based on the referencing of the schedules.
- xi. The regulation which addresses **joining of a party** is now regulation 30 under the proposed regulation. This regulation is currently regulation 17 under Part 3 of the Second Schedule of the present regulation.
- xii. The regulation which addresses **consideration of complaints together** is now regulation 31 under the proposed regulation. This regulation is currently regulation 18 under Part 3 of the Second Schedule of the present regulation.
- xiii. Regulation 32 under the proposed regulation which addresses **register** is a modification of regulation 28 (1) and 30 (1) of the current regulations. It is to be noted that the proposed regulation has a new clause (regulation 32 (2)), which details the contents of the register.

9) Part IV of the proposed Regulation-**COSTS**

- i. The regulation which addresses **costs** is now regulation 33 under the proposed regulation. This regulation is currently regulation 40 in the present regulation.
- ii. The regulation which addresses **cost structure** is now regulation 34 under the proposed regulation. This regulation is currently regulation 41 in the present regulation.

10)Part V of the proposed Regulation-**MISCELLENEOUS**

- i. The regulation which addresses **filing and service of documents** is now regulation 35 under the proposed regulation. This regulation is currently regulation 42 in the present regulation.
- ii. The regulation which addresses **effective date of filing or service** is now regulation 36 under the proposed regulation, with slight modifications. This regulation is currently regulation 43 in the present regulation.
- iii. The regulation which addresses **appeals** is now regulation 37 under the proposed regulation. This regulation is currently regulation 45 in the present regulation. It is to be noted that there are slight modifications to the proposed regulation i.e. whereby a person is not permitted by law to appeal against the decision made by the arbitrator.

11)**SCHEDULES:**

- i. **First Schedule** remains unchanged
- ii. **Second Schedule** in the proposed regulations contains the forms to be used. In the current regulations, the forms are in the Third Schedule. In addition, the following changes have been made:

FORMS	CURRENT TELECOMMUNICATIONS (DISPUTE RESOLUTION) REGULATIONS	PROPOSED ELECTRONIC COMMUNICATIONS (DISPUTE RESOLUTION) REGULATIONS
Form 1	Complaint Form	Complaint to Commission
Form 2	Application to the Commission	Notice of Discontinuance
Form 3	Notice of Discontinuance	Notice of Appearance
Form 4	Notice of Appearance	Notice of Hearing
Form 5	Dispute Resolution Order	Notice of Pre-Hearing
Form 6	Notice of Hearing	Notice of Determination
Form 7	Notice of application for extension of time	Witness summons
Form 8	Notice of Pre-Hearing	Notice of application for extension of time
Form 9	Notice of Determination	
Form 10	Witness Summons	
Form 11	Order	

The previous Form 1, will be relocated to the Electronic Communications Consumer Protection Regulations. This is the prescribed form to be used by all operators to register customer complaints. There may be slight modifications to the current Dispute Resolution forms e.g. applicant is now called a complainant as the matter would have escalated from being a complaint between the operator and the customer, previous customer or other person to an unresolved dispute between the parties by the time it gets to the Commission.

- iii. **Part 1 of the Third Schedule**, which addresses **mediation** in the proposed regulations is currently Part 1 of the Second Schedule in the present regulations. In addition, **Part 2 of the Third Schedule** in the proposed regulation addresses **arbitration**, which was previously Part 4 of the Second Schedule.
- iv. Part 2 of the Second Schedule of the current regulation, which addresses **conciliation** has been deleted from the proposed regulation.
- v. Part 3 of the Second Schedule of the current regulation, which addresses **tribunal** has been amended, as previously highlighted above under Part III of the proposed regulation.

12) GENERAL COMMENTS:

- i. Regulation 4, which addresses **procedure for seeking redress** under current regulation has been deleted in its entirety in the proposed regulations.
- ii. Regulation 5, which addresses **tracking by respondent telecommunications provider** under current regulation has been deleted in its entirety in the proposed regulations.
- iii. Regulation 6, which addresses **application for assistance by the Commission** under current regulation has been deleted its entirety in the proposed regulations.
- iv. Regulation 8, which addresses **restrictions on the Commission's assistance** under current regulation has been deleted its entirety in the proposed regulations.
- v. Regulation 9, which addresses **response by respondent telecommunications provider** under current regulation has been deleted its entirety in the proposed regulations.

- vi. Regulation 11, which addresses **consultations with ECTEL** under current regulation has been deleted its entirety in the proposed regulations.
- vii. Regulation 12, which addresses **disposition of application** under current regulation has been deleted its entirety in the proposed regulations.
- viii. Regulation 13, which addresses **expeditious resolution of disputes** under current regulation has been deleted its entirety in the proposed regulations.
- ix. Regulation 14, which addresses **extension of time** under current regulation has been deleted its entirety in the proposed regulations.
- x. Regulation 15, which addresses **ongoing activities of the Commission** under current regulation has been deleted its entirety in the proposed regulations.
- xi. Regulation 16, which addresses **selection of alternative dispute resolution process** under current regulation has been deleted its entirety in the proposed regulations.
- xii. Regulation 17, which addresses **responsibilities of alternative dispute resolution personnel** under current regulation has been deleted its entirety in the proposed regulations.
- xiii. Regulation 18, which addresses **duties of the Commission relating to mediation** under current regulation has been deleted its entirety in the proposed regulations.
- xiv. Regulation 19, which addresses **non-discrimination and transparency** under current regulation has been deleted its entirety in the proposed regulations.
- xv. Regulation 20, which addresses **responsibility of parties in alternative dispute resolution process** under current regulation has been deleted its entirety in the proposed regulations.
- xvi. Regulation 21, which addresses **information to ECTEL** under current regulation has been deleted its entirety in the proposed regulations.
- xvii. Regulation 24, which addresses **continuation of service during alternative dispute resolution process** under current regulation has been deleted its entirety in the proposed regulations.

- xviii. Regulation 25, which addresses **issues of dispute resolution upon determination by Commission** under current regulation has been deleted its entirety in the proposed regulations.
- xix. Regulation 26 which addresses **issuance of dispute resolution order etc. upon determination by alternative dispute resolution personnel** under current regulation has been deleted its entirety in the proposed regulations.
- xx. Regulation 27, which addresses **continuation of networks during dispute** under current regulation has been deleted its entirety in the proposed regulations.
- xxi. Parts of Regulation 28, which addresses **dispute resolution Orders Register** under current regulation was modified in the proposed regulations.
- xxii. Regulation 29, which addresses **content of the Dispute Resolution Order Register** under current regulation has been deleted its entirety in the proposed regulations.
- xxiii. Parts of Regulation 30, which addresses **access to dispute resolution order Register** under current regulation was modified in the proposed regulations.
- xxiv. Regulation 31, which addresses **treatment of confidentiality requests** under current regulation has been deleted its entirety in the proposed regulations.
- xxv. Regulation 32, which addresses **reporting by Commission** under current regulation has been deleted its entirety in the proposed regulations.

ELECTRONIC COMMUNICATIONS (DISPUTE RESOLUTION) REGULATIONS

[CONTRACTING STATE]

ARRANGEMENT OF REGULATIONS

Regulation

PRELIMINARY

1. Citation
2. Interpretation
3. Application

PART I COMPLAINTS

4. Form of complaint
5. Format for presentation of information
6. Form of notice of discontinuance

PART II MEDIATION AND ARBITRATION

Mediation

7. Duties of the Commission relating to mediation
8. Mediation process

Arbitration

9. Submitting a dispute to arbitration
10. Number of arbitrators
11. Decisions of arbitrators
12. Conduct of proceedings
13. Decisions to be in writing
14. Recording of awards

General

15. Responsibility of mediator or arbitrator
16. Non-discrimination and transparency
17. Responsibility of parties in mediation or arbitration
18. Burden of proof
19. Registration of information

**PART III
TRIBUNAL**

- 20. Guidelines for resolving disputes
- 21. Notice of appearance
- 22. Notice of hearing
- 23. Hearing and determining issue on bringing or contesting complaint
- 24. Pre-hearing review
- 25. Representations
- 26. Evidence and witnesses
- 27. Record of decision
- 28. Orders of the Tribunal
- 29. Extension of time
- 30. Joining of party
- 31. Consideration of complaints together
- 32. Register

**PART IV
COSTS**

- 33. Payment of costs
- 34. Cost structure

**PART V
MISCELLANEOUS**

- 35. Filing and service of documents
- 36. Effective date of filing or service
- 37. Appeals

- SCHEDULE 1**
- SCHEDULE 2**
- SCHEDULE 3**

ELECTRONIC COMMUNICATIONS (DISPUTE RESOLUTION) REGULATIONS

[CONTRACTING STATE]

[STATUTORY RULES AND ORDERS/STATUTORY INSTRUMENT], 20[-], No.

(Gazette [Date])

Made by the Minister under section [-] of the Electronic Communications Act, No. of 20[-].

PRELIMINARY

Citation

1. These Regulations may be cited as the Electronic Communications (Dispute Resolution) Regulations, 20[-].

Interpretation

2. In these Regulations, unless the context otherwise requires —

“Act” means the Electronic Communications Act, No. of [-];

“arbitration” means the arbitration process as outlined in these Regulations in which an arbitrator, or panel of arbitrators, renders a binding decision on a dispute between the parties after reviewing the arguments presented by all parties;

“arbitration panel” means an arbitration panel constituted in accordance with these Regulations;

“arbitrator” means a neutral person appointed pursuant to these Regulations, to hear the claims and arguments respecting the dispute and to render a binding decision;

“complaints tracking system” means the complaints tracking system kept and maintained pursuant to section [-] of the Act;

“Contracting State” means a country listed in Schedule 1;

“document” includes a statement of complaint, an application or other information required pursuant to these Regulations;

“litigation” means the process of taking a dispute before a court of law where one party files a lawsuit against another party and both parties appear before the court;

“mediation” means a dispute resolution process in which a mediator helps parties to reach an agreement;

“mediator” means a neutral third person who helps parties to reach an agreement; but has no power to impose a decision on the parties;

“notice of discontinuance” means a notice of discontinuance pursuant to regulation 10;

“negotiation” means bargaining efforts by which parties attempt to resolve a dispute;

“Register” means the Dispute Resolution Order Register, which the Commission keeps and maintains pursuant to regulation 28;

“Tribunal” means a Tribunal established pursuant to section [-] of the Act.

Application

3. These Regulations apply to all disputes concerning the operation of electronic communications facilities and provision of electronic communication services arising in [Contracting State] including complaints initiated by —

- (a) subscribers or other members of the public against a licensee;
- (b) persons using frequency authorizations;
- (c) a retail customer against a licensee or against 2 or more licensees;
- (d) a landowner against a licensee.

PART I COMPLAINTS

Form of complaint

4. For the purposes of section 98(4) of the Act, a complaint shall be in the form set out in Form 1 of Schedule 2.

Format for presentation of information

5. For the purposes of section [-] of the Act, the Commission may require a format for presentation of information including —

- (a) technical standards;
- (b) access charges;
- (c) area of operation;
- (d) consumer related information;
- (e) downtimes;

- (f) fault resolving procedures;
- (g) interconnection;
- (h) port charges;
- (i) quality of service; and
- (j) revenue sharing arrangements.

Form of notice of discontinuance

6. For the purposes of section [-] of the Act, the notice of discontinuance shall be in the form set out as Form 2 of Schedule 2.

**PART II
MEDIATION AND ARBITRATION**

Mediation

Duties of the Commission relating to mediation

7. (1) The Commission shall keep and maintain a list of approved mediators selected from

- (a) retired Judges of any Commonwealth Country;
- (b) retired Magistrates of the Magistrates Court or District Court in any Contracting State;
- (c) persons recognised by the High Court in a Contracting State as being qualified in mediation;
- (d) any other person who has three years' practical experience in mediation and holds qualifications recognised by ECTEL.

(2) Where mediation is used to resolve a dispute, the parties to the dispute shall, within a period specified by the Commission together select a mediator or co-mediators from the list of approved mediators kept by the Commission pursuant to sub-regulation (1).

(3) Where the parties to the dispute agree, the parties may, within a period of time specified by the Commission, select a mediator whose name does not appear on the list of approved mediators kept by the Commission.

(4) Where the parties fail to agree to select a mediator or co-mediators within the specified time, the Commission may select and appoint a mediator from the approved list of mediators to carry out the mediation.

Mediation process

8. Where the parties agree or the Commission decides that mediation is the appropriate process the provisions of Part 1 of Schedule 3 applies.

Arbitration

Submitting a dispute to arbitration

9. Where a dispute arises between parties to which these Regulations apply, the parties may -

- (a) by instrument in writing agree to submit their dispute to arbitration; or
- (b) be directed to arbitration by the Commission.

Number of arbitrators

10. The parties to an arbitration agreement may determine the number of arbitrators to be appointed, but where no such determination is made the number of arbitrators is 3.

Decisions of arbitrators

11. In arbitration proceedings comprising 3 arbitrators, unless otherwise agreed by the parties, any decision of the arbitration panel shall be by majority of all its members.

Conduct of proceedings

12. (1) The parties to a dispute shall determine the procedure for the conduct of arbitration proceedings.

- (2) Where the parties fail to agree on their procedure Part 2 of Schedule 3 applies.

Decisions to be in writing

13. (1) An award made by an arbitration panel shall be in writing and signed by the arbitrator or arbitrators.

(2) Where the arbitration panel comprises of more than one arbitrator, the signatures of a majority of all the members of the arbitration panel shall suffice if the reason for the absence of any signature is stated.

- (3) The arbitration panel shall state on the award -

- (a) the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms;
- (b) the date it was made;
- (c) the place where the arbitration took place.

(4) A copy of the award made and signed by the arbitrators in accordance with sub-regulations (1) and (2) shall be delivered to the parties to the dispute and the Commission.

Recording of awards

14. The Commission shall record the details of the award in the Complaints Tracking System.

General

Responsibility of mediator or arbitrator

15. Once appointed, the mediator or arbitrator shall —

- (a) establish a process and calendar to enable resolution within 60 days;
- (b) notify all parties of the process and calendar;
- (c) ensure that the selected process and calendar are activated and managed in the most efficient manner possible;
- (d) request such information and resources from the Commission as the mediator or arbitrator considers necessary for the purpose of resolving the dispute;
- (e) ensure that the parties have an opportunity to know the case to be met and to respond to it;
- (f) in the case of the arbitration panel, make a decision based on the evidence and mandate a fair resolution to each issue in dispute within the 60-day time limit;
- (g) record the resolution to each issue in dispute;
- (h) complete a report respecting the resolution of the dispute and file a copy with the Commission.

Non-discrimination and transparency

16. (1) A mediation or arbitration process including quality of process, provided pursuant to these Regulations, shall be provided to the parties on a non-discriminatory basis.

(2) The details of an alternative dispute resolution process used in the resolution of a dispute pursuant to these Regulations shall be included in the final report made available to the public.

Responsibility of parties in mediation or arbitration

17. (1) During mediation or arbitration, the parties shall —

- (a) act in a responsible manner that enables resolution of the dispute within the shortest time possible without prejudicing the interests of other parties;
- (b) provide, upon request and subject to any claim for confidentiality, any additional and relevant information or document as may be required.

(2) The information provided pursuant to sub-regulation (1) shall be accurate and complete and furnished in a timely manner.

(3) Where the Commission finds that the information under sub-regulation (1) has not been provided in accordance with this regulation, the Commission may report the matter to the Director of Public Prosecutions for necessary action.

Burden of proof

18. In mediation or arbitration —

- (a) the burden of proof respecting each complaint or concern is on a balance of probabilities and rests with the party making the assertion; and
- (b) the mediator or arbitrator shall determine the accuracy and veracity of the information presented by the parties.

Registration of information

19. Upon receipt of a report from the mediator or arbitrator, the Commission shall register the information into the Complaints Tracking System.

PART III TRIBUNAL

Guidelines for resolving disputes

20. The Tribunal shall, in exercising its functions, take into account the —

- (a) the interest of all parties to the dispute;
- (b) interests of the users as well as the interest of electronic communications providers;
- (c) public interest;
- (d) regulatory obligations or constraints imposed on any of the parties to the dispute;
- (e) any other relevant matter.

Notice of appearance

21. (1) A respondent shall, within 18 days of receiving a copy of the complaint enter an appearance to the proceedings by presenting to the Tribunal a notice of appearance as set out in Form 3 of Schedule 2 -

- (a) setting out his or her full name and address and, if different, an address within the jurisdiction to which he or she requires notices and documents relating to the proceedings to be sent;
- (b) stating whether or not he or she intends to resist the application; and
- (c) if he or she does intend to resist it, setting out with sufficient particulars to show on what grounds.

(2) Upon receipt of a notice of appearance the Tribunal shall cause to be sent a copy of such notice to each other party.

(3) A respondent who has not entered an appearance is not entitled to take any part in the proceedings except -

- (a) to apply for an extension of the time appointed for entering an appearance;
- (b) to make an application for a direction requiring the complainant to provide further or better particulars of the ground on which he relies and of any facts and contentions relevant to;
- (c) to be called as a witness by another party; or
- (d) in the discretion of the Tribunal where no harm or prejudice would be caused to the complainant.

Notice of hearing

22. (1) The Chairperson shall fix the date, time and place of the hearing of the complaint and shall cause a notice of hearing as set out in Form 4 of Schedule 2, together with information and guidance, if necessary, as to attendance at the hearing, witnesses and submission of documents, representation by another person and the making of written representations.

(2) The notice of hearing shall be sent to every party not less than 14 days before the date fixed for the hearing except where the Chairperson has agreed to a shorter time with the parties.

Hearing and determining issue on bringing or contesting proceedings

23. (1) The Tribunal may at any time before the hearing of a complaint, on the application of a party made by notice to the Chairperson or of its own motion hear and determine any issue relating to the entitlement of a party to bring or contest the proceedings to which the complaint relates.

(2) The Tribunal shall not determine such an issue unless the Chairperson has sent notice to each of the parties giving them an opportunity to submit representations in writing and to advance oral argument before the Tribunal.

Pre-hearing review

24. (1) The Tribunal may at any time before the hearing of a complaint on the application of a party made by notice to the Chairperson or of its own motion, conduct a pre-hearing review, consisting of a consideration of -

- (a) the contents of the complaint and notice of appearance;
- (b) any representations in writing; and
- (c) any oral argument advanced by or on behalf of a party.

(2) A pre-hearing review shall not take place unless the Chairperson has caused to be sent to all parties' notice of the pre-hearing as set out in Form 5 of Schedule 2 giving all parties to the proceedings an opportunity to submit representations in writing and to advance oral argument at the review.

(3) Where the Tribunal determines that there shall not be a review, the Chairperson shall cause to be sent notice of the determination as set out in Form 6 of Schedule 2 to that party.

Representations

25. (1) If a party wishes to submit representations in writing for consideration by the Tribunal, he shall present his or her representations to the Chairperson not less than 10 days before the hearing and shall at the same time send a copy to the other party.

(2) The Tribunal shall, if it considers it appropriate, consider representations in writing, which have been submitted to the Chairperson less than 10 days before the hearing.

Evidence and witnesses

26. (1) The Tribunal shall, so far as it appears to be appropriate, seek to avoid formality in its proceedings and shall not be bound by any law relating to admissibility of evidence in proceedings before any court of law.

(2) The Tribunal shall make such enquiries of persons appearing before it and witnesses that it considers appropriate and shall otherwise conduct the hearing in such manner, as it considers most appropriate for the clarification of the issues before it and generally to the just determination of the proceedings.

(3) At the hearing of the complaint a party shall be entitled to give evidence, call witnesses, to question any witness and to address the Tribunal.

(4) A summons to compel the attendance of witnesses under section [] of the Act is as set out in Form 7 of Schedule 2.

(5) If a party fails to attend or be represented at the time and place fixed for the hearing, the Tribunal may, proceed to adjudicate fully on the case as if that party had duly appeared or may adjourn the hearing to a later date; but before adjudicating on any application in the absence of a party, the Tribunal shall consider the complaint or notice of appearance, any representations in writing presented by him and any written response furnished to the Tribunal.

Record of decision

27. (1) The Chairperson of the Tribunal shall record the decision of the Tribunal, which may be given orally at the end of a hearing or reserved.

(2) The Tribunal shall give reasons for its decision in a document signed by its Chairperson.

Orders of the Tribunal

28. (1) Without limiting the generality of section [-] of the Act, the Tribunal may -

- (a) if the complainant at any time gives notice of the withdrawal of his complaint, dismiss the proceedings;
- (b) if both or all the parties agree in writing upon the terms of a decision to be made by the Tribunal, make a decision;
- (c) subject to paragraph (3), at any stage of the proceedings, order to be struck out or amended, any complaint or notice of appearance, or anything in such complaint or notice of appearance on the grounds that it is scandalous, misconceived or vexatious;
- (d) subject to paragraph (2) at any stage of the proceedings, order to be struck out any complaint or notice of appearance on the grounds that the manner in which the proceedings have been conducted on behalf of the complainant or, as the case may be, respondent has been scandalous, unreasonable or vexatious; and
- (e) subject to paragraph (2) on the application of the respondent or of its own motion, order a complaint to be struck off for want of prosecution;
- (f) with the agreement of the parties determine a dispute -
 - (i) solely on written submissions; or
 - (ii) a combination of written and oral submissions.

(2) Before making an order under sub-paragraph (c), (d), or (e) of paragraph (1), the Tribunal shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made; but this paragraph shall not be taken to require the Tribunal to send such notice to that party if the party has been given an opportunity to show cause orally why the order should not be made.

(3) Where a notice required by paragraph (2) is sent in relation to an order to strike out a complaint for want of prosecution, service of the notice shall be treated as having been effected if it has been sent by registered post, courier or delivered by hand and the Tribunal may strike out the complaint.

(4) The Chairperson of the Tribunal may postpone the day or times fixed for, or adjourn any hearing and vary any such postponement or adjournment.

Extension of time

29. (1) The Tribunal may, on the application of a party or of its own motion, extend the time appointed for doing any act by or under these paragraphs and may do so whether or not the time so appointed has expired.

(2) An application under paragraph (1) shall be made by presenting to the Chairperson of the Tribunal a notice of application as set out in Form 8 of Schedule 2, which shall state the title of the proceedings and shall set out the grounds for the application.

(3) The Chairperson shall cause to be given notice to the parties of any extension of time granted under this paragraph.

Joining of party

30. (1) The Tribunal may at any time during the course of the proceeding, on the application of any person made by notice to the Chairperson or of its own motion, direct any person against whom relief is sought to be joined as a party, and give such directions as it considers necessary.

(2) The Tribunal may likewise, on such application or of its own motion, order that any respondent named in the complaint, or subsequently added, who appears to the Tribunal not to have been, or to have ceased to be directly interested in the subject of the complaint, be dismissed from the proceedings.

(3) Where there are a number of persons having the same interest in an originating application, one or more of them may be cited as the person or persons against whom relief is sought, or may be authorized by the Tribunal, before or at the hearing, to defend on behalf of some or all of the persons so interested.

Consideration of complaints together

31. (1) Where, in relation to two or more complaints pending before the Tribunal it appears to the Tribunal on the application of a party made by notice to the Chairperson or of its own motion, that -

- (a) a common question of law or fact arises in some or all of the complaints; or
- (b) the relief claimed in some or all of those complaints is in respect of or arises out of the same set of facts; or
- (c) for any other reason it is desirable to make an order under this paragraph;

the Tribunal may order that some or all the complaints in respect of which it so appears to the Tribunal shall be considered together, and may give such consequential directions as may be necessary.

(2) The Tribunal shall only make an order under this paragraph if -

- (a) each of the parties concerned has been given an opportunity at a hearing to show cause why such an order should not be made; or
- (b) it has sent notice to all the parties concerned giving them an opportunity to show such cause.

(3) The Tribunal may, on the application of a party made by notice to the Chairperson of the Tribunal or of its own motion, vary or set aside an order made under this paragraph but shall not

do so unless it has given each party an opportunity to make either oral or written representations before the order is varied or set aside.

Register

32. (1) The Chairperson of the Tribunal shall cause to be created and shall maintain a Register of matters pending before the Tribunal and the Register shall be open to inspection by the public.

(2) The Register shall contain details of the complaint and response, documents recording the decisions of the Tribunal and reasons for the decision.

PART IV COSTS

Payment of costs

33. Except as otherwise provided, **the Commission or Tribunal** may, on an application by a party or of its own motion, make an order as to costs of any matter or proceedings or part thereof before it.

Cost structure

34. (1) Except as otherwise provided, the costs of mediation or arbitration includes —

- (a) costs of filing;
- (b) costs of the Commission, mediator or arbitrator;
- (c) costs of copying or documenting the dispute;
- (d) expenses of witnesses;
- (e) administrative costs arising out of the investigation of the dispute; and
- (f) such other costs as **the Commission or Tribunal** considers fair and reasonable.

(2) In deciding what would be reasonable, **the Commission** shall take into account all the circumstances respecting the matter, including—

- (a) the care, speed and accuracy with which the matter was prepared;
- (b) the conduct of the parties before as well as during the proceedings; and
- (c) the manner in which the parties pursued —
 - (i) a particular allegation,
 - (ii) a particular issue,
 - (iii) the dispute as a whole.

**PART V
MISCELLANEOUS**

Filing and service of documents

35. A document may be filed or served in any one of the following ways —

- (a) by delivering it personally;
- (b) by courier service;
- (c) by e-mail;
- (d) facsimile service; or
- (e) by regular postal mail.

Effective date of filing or service

36. (1) Where a document is couriered or posted, the filing or service date of the document shall be the date on which the document is couriered or posted as determined by the date of the post office stamp or courier stamp affixed to a proof of posting or proof of courier.

(2) Notwithstanding sub-regulation (1), a document pursuant to this Part is filed or served on the day when it is received at the office of the party to whom it is directed, or if it is received outside of normal business hours, on the next business day in which that office is open.

Appeals

37. (1) An appeal against a decision made by an arbitrator shall lie to the Court of Appeal at the instance of any party with respect to whom the decision was made and the appeal shall be made within six weeks after the date of service of a copy of the decision on that party.

(2) An appeal against a decision made by an arbitrator shall lie to the High Court at the instance of any party with respect to whom the decision was made and the appeal shall be made within 6 weeks after the date of service of a copy of the decision on that party.

SCHEDULE 1

(Regulation 2)

1. The Commonwealth of Dominica;
2. Grenada;
3. Saint Christopher and Nevis;
4. Saint Lucia; and
5. Saint Vincent and the Grenadines.

SCHEDULE 2

FORM 1

(Regulation 6)

COMPLAINT TO COMMISSION

Pre-fix..... Complaint number.....
[to be completed by the Commission] [the complaint number provided by the licensee]

Particulars of Complainant:

1. Mr. [-] Mrs. [-] Miss [-] Ms [-] Other [-]
2. First Names.....
3. Surname.....
4. Address for service of documents.....

Particulars of Respondent:

1. Mr. [-] Mrs. [-] Miss [-] Ms [-] other [-]
2. First Names.....
3. Surname.....
4. Address for service of documents.....

Application is hereby made to the Commission pursuant to section [-] of the Electronic Communications Act to assist the parties in the resolution of a dispute.

Attached to this application are the following documents: -

1. Statement of Complaint
2. (any other relevant documents)

Having regard to the nature of the complaint I hereby request that this matter be determined by...
[Please tick appropriate box]

Mediation

Arbitration

No preferred option

Dated this _____ day of _____, 20[].

Complainant/Complainant's representative

FORM 2

(Regulation 6)

NOTICE OF DISCONTINUANCE

Pre-fix..... Complaint number.....
[to be completed by the Commission] [the complaint number provided by the licensee]

Particulars of Complainant:

1. Mr. [-] Mrs. [-] Miss [-] Ms. [-] Other [-]
2. First Names.....
3. Surname.....
4. Address for service of documents.....

Particulars of Respondent:

1. Mr. [-] Mrs. [-] Miss [-] Ms [-] other [-]
2. First Names.....
3. Surname.....
4. Address (for service of document)

Take Notice that the parties to this dispute hereby discontinue pursuant to section [-] of the Electronic Communications Act.

Dated this _____ day of _____, 20[-].

.....
Complainant/Respondent

FORM 3

(Regulation 21)

NOTICE OF APPEARANCE

Pre-fix..... Complaint number.....
[to be completed by the Tribunal] [the complaint number provided by the licensee]

Particulars of Complainant:

- 1. Mr. [-] Mrs. [-] Miss [-] Ms [-] other [-]
- 2. First Names.....
- 3. Surname.....
- 4. Address for service of documents.....

Particulars of Respondent:

- 1. Mr. [-] Mrs. [-] Miss [-] Ms [-] other [-]
- 2. First Names.....
- 3. Surname.....
- 4. Address for service of document.....

WARNING: If this form is not fully completed and returned to the Tribunal at the address below within 10 days of service of the complaint form on you, the claimant will be entitled to have the Tribunal adjudicate on this matter in your absence.

1. Have you received the complaint form with the above claim number?
YES/NO

2. If so, when? ___/___/___

3. Are your names properly stated on the complaint form?

If not, what are your full names?..... YES/NO

4. Is your contact information on the complaint form correct?

If no, please proceed to number 5 YES/NO

5. Insert here correct contact information for you

6. Do you intend to defend the complaint? If so give the particulars and grounds on which you intend to resist the application (use extra sheet if required) YES/NO

7. Will you be represented by Legal Counsel, Attorney or self
(please circle your choice of representation)

8. If an Attorney or Legal Counsel is acting for you please give details (all documents will be sent to your representative)

Name.....

Address.....

Postal address (if different from above)

Address for service (if different from above)

Daytime telephone number (s).....

Fax number(s).....

Email address.....

Dated.....

Signed.....

[respondent in person] respondent's legal practitioner/Attorney]

The Tribunal's office is at [*** **] telephone number *** ***, FAX *** **. The office is open between [...a.m.] and [... p.m.].....to.....except public holidays.

FORM 6

(Regulation 24)

NOTICE OF DETERMINATION

Pre-fix..... Complaint number.....
[to be completed by the Tribunal] [the complaint number provided by the licensee]

Particulars of Complainant:

- 1. Mr. [-] Mrs. [-] Miss [-] Ms [-] Other [-]
- 2. First Names.....
- 3. Surname.....
- 4. Address for service of documents.....

Particulars of Respondent:

- 1. Mr. [] Mrs. [] Miss [] Ms [] Other []
- 2. First Names.....
- 3. Surname.....
- 4. Address for service of documents

Take notice that the Tribunal in the above captioned matter has considered the application by the Complainant/Respondent for a pre-hearing of [state here the nature of the application] and has denied the application on the following ground(s)

- 1. ...
- 2. ...
- 3. ...

Dated the _____ day of _____, 20[].

.....
Chairperson

FORM 7

(Regulation 26)

WITNESS SUMMONS

Pre-fix..... Complaint number.....
[to be completed by the Tribunal] [the complaint number provided by the licensee]

Particulars of Complainant:

- 1. Mr. [-] Mrs. [-] Miss [-] Ms [-] Other [-]
- 2. First Names.....
- 3. Surname.....
- 4. Address for service of documents.....

Particulars of Respondent:

- 1. Mr. [-] Mrs. [-] Miss [-] Ms [-] Other [-]
- 2. First Names.....
- 3. Surname.....
- 4. Address for service of documents.....

Pursuant to section [-] of the Electronic Communications Act No [-] of 200[-] you are hereby summoned to attend a sitting of the Tribunal in the above captioned matter at [insert here venue] onday the.....day of200[] to give evidence and to bring with you the following documents:

- 1.
- 2.
- 3. (or indicate not applicable/NA)

Dated the day of , 20[].

.....
Chairperson

FORM 8

(Regulation 29)

NOTICE OF APPLICATION FOR AN EXTENSION OF TIME

Pre-fix..... Complaint number.....
[to be completed by the Tribunal] [the complaint number provided by the licensee]

Particulars of Complainant:

- 1. Mr. [-] Mrs. [-] Miss [-] Ms. [-] Other [-]
- 2. First Names.....
- 3. Surname.....
- 4. Address for service of documents

Particulars of Respondent:

- 1. Mr. [-] Mrs. [] Miss [] Ms [] Other []
- 2. First Names.....
- 3. Surname.....
- 4. Address for service of documents.....

Take notice that the Complainant/Respondent in the above captioned matter has applied to [Tribunal] for an extension of time to [state here the purpose or the reason for the application] and that the application will be heard onday theday of200[-] ato'clock in the fore/after noon.

Dated the _____ day of _____, 20[].

.....
Chairperson

SCHEDULE 3

(Regulations 8, 12 and 20)

PART 1 Mediation

1. Mediation is a private, informal alternative dispute resolution process by which the parties with the assistance of a neutral third party called a mediator try to reach a voluntary agreement on the matter in dispute and to end the conflict.
2. Mediation is justifiable when:
 - (a) there is a written agreement to submit conflicts to mediation;
 - (b) at least one of the parties requests mediation;
 - (c) notwithstanding sincere or “good faith” effort to amicably resolve the dispute the parties have failed to arrive at an amicable settlement.
3. The parties may agree to exclude or vary these paragraphs at any time.
4. (1) A mediator may be selected in any of the following ways:
 - (a) the parties to the dispute agree on the name of a sole mediator to mediating between them; or
 - (b) where the parties are unable to agree on a sole mediator each party shall nominate a mediator. These mediators shall act as co-mediators during the mediation proceedings; or
 - (c) in the event that a mediator is not selected in accordance with paragraph (a) or (b) the Commission shall select a Mediator. Once selected, the Commission shall appoint the Mediator.
5. (1) The Commission shall for the purpose of appointing mediators between parties in disputes prepare a list of mediators and first publish the same in the Gazette within 90 days of the coming into force of these Regulations.
 - (2) The Commission shall, from time to time, revise the list and shall no later than March 31st of each year publish the list of approved mediators.
 - (3) The consent of the persons whose names are included in the panel shall be obtained before being included on the list.
 - (4) The list of names shall contain a detailed annexure giving details of the qualifications of the mediators and their professional or technical experience.

6. (1) Notwithstanding the provisions of paragraphs 4 and 5 the parties to a dispute may select a mediator(s) whose name (s) do not appear on the list published by the Commission.

(2) Where such a selection is made the parties shall notify the Commission in writing of the name(s) of the mediator(s) and shall submit the qualifications such person(s) to the Commission.

(3) The notification to the Commission shall be signed by all parties to the dispute.

7. The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under paragraph 4, namely -

(a) retired Judges of any Commonwealth Country;

(b) retired Magistrates of the Magistrates Court in any Contracting State;

(c) persons recognised by the High Court in any Contracting State as being qualified in mediation;

(d) any other person who has 3 years' practical experience in mediation and holds qualifications recognised by ECTEL.

8. A person whose name has been included in the list referred to in paragraph 5 may be removed or his or her name may be deleted by the Commission which appointed him or her if –

(a) he or she resigns or withdraws his name from the list for any reason;

(b) he or she dies;

(c) he or she is declared insolvent or bankrupt by any court of competent jurisdiction or is declared of unsound mind;

(d) he or she exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;

(e) the Commission which appointed, upon receipt of information, if it is satisfied, after conducting such inquiry it deems fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel, provided that, before removing or deleting his or her name, under paragraphs (c) and (d) the Commission shall hear the mediator whose name it is proposed to be removed or deleted from the list and shall pass a reasoned order.

9. (1) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

(2) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely -

- (a) he or she shall fix, in consultation with the parties, a time schedule, the dates and time of each mediation session, where all the parties must be present;
- (b) he or she shall determine the place of the mediation after consultation with the parties;
- (c) each party shall, 14 days before the first session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position with respect to those issues and all information reasonably required for the mediator to understand the issue. Such memoranda shall also be mutually exchanged between the parties;
- (d) each party shall furnish to the mediator such other information as may be required by him or her in connection with the issues to be resolved.

(3) Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him or her and shall thereafter interact with the other mediators, with a view to resolving disputes.

10. The mediator shall not be bound by the [Civil Procedure Rules, Code of Civil Procedure or the Evidence Act], but shall be guided by principles of fairness and justice, having regard to the rights and obligations of the parties, the potential impact on the telecommunications sector and the circumstances of the disputes.

11. (1) The parties to a dispute shall be present personally or through their legal counsel or power of attorney holders at the meeting or sessions notified by the mediator.

(2) If a party or its appointed legal counsel or power of attorney fails to attend a session or a meeting notified by a mediator, other parties or the mediator can request the Commission to issue appropriate directions to that party to attend before the mediator, if the Commission finds that that party is absenting himself or herself before the mediator without sufficient reason, the Commission may make such determination as meets the justice of the case.

12. In order to facilitate the conduct of the mediation proceedings the Commission shall provide required administrative assistance.

13. Any party to a dispute may at any stage in the meetings or sessions make a “without prejudice” or “a conditional” offer of settlement to the other party with or without notice to the mediator.

14. Where parties to a dispute arrive at a settlement after mediation proceedings have commenced but outside the mediation sessions, the parties may still be liable for the costs of the mediator and the mediation proceedings.

15. The role of the mediator shall be to attempt to facilitate voluntary resolution of the dispute between the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute, emphasizing that it is the responsibility of the parties to take decisions which affect them; he or she shall not impose any terms of settlement on the parties.

16. The parties must understand that the mediator only facilitates arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the Commission or mediator warrant that the mediation will result in a settlement. The mediator shall not impose any decisions on the parties.

17. (1) On the expiry of 60 days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the mediator or the parties are of the view that an extension of time is necessary or may be useful; but such extension shall not be beyond a further period of 30 days unless both parties agree to a longer extension.

(2) Where an extension of time is provided or agreed to pursuant to this Part, the mediator shall inform the Commission of the extension of time.

18. While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute if possible.

19. (1) Receipt or perusal, or preparation of records, reports or other documents by the mediator while serving in that capacity shall be confidential and the mediator shall not be compelled to divulge information, including to a Commission, regarding those documents nor as to what transpired during mediation.

(2) Parties shall remain confidential in respect of events that transpired during mediation and shall not rely on or introduce in any other proceeding -

(a) views expressed by a party in the course of the mediation proceeding;

(b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;

(c) proposals made or views expressed by the mediator;

(d) any admission made by a party in the course of mediation proceedings;

(e) the fact that a party had or had not indicated a willingness to accept a proposal.

(3) (a) There shall be no permanent stenographic or other hand written notes, audio or video recordings of the mediation proceedings.

(b) At the end of every mediation session and in the presence of the other parties and the Mediator all notes or records made during the sessions shall be destroyed.

20. Mediation sessions and meetings are private; only the concerned parties or their counsel or power of attorney holders can attend. Other persons may attend only with the consent of the parties and with the permission of the mediator.

21. No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings nor shall he be summoned by any party to the mediation proceedings to appear in any court of law or any other authority to testify or provide information in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

22. (1) In order to preserve the confidence of the parties in the mediation proceedings and the neutrality of the mediator, there shall be no communication between the mediator and the Commission except as provided in paragraphs (b) and (c).

(2) If any communication between the Commission and the mediator is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney.

(3) Communication between the mediator and the Commission shall be limited to communication by the mediator -

(a) with the Commission about the failure of a party to attend;

(b) with the Commission with the consent of the parties;

(c) regarding his assessment that the case is not suited for settlement through mediation;

(d) that the parties have settled the dispute or disputes.

23. (1) Where an agreement is reached between the parties in regard to all the issues in dispute or some of the issues, the same shall be reduced to writing in the prescribed form and signed by the parties or their power of attorney holder. If any legal counsel has represented the parties, they shall attest the signature of their respective clients. Where legal counsel has not represented the parties, the Mediator shall record the identification number of the party below their Signature. (Identification number may be obtained from any form of picture identification including passport, drivers licence or national identification card).

(2) The agreement of the parties so signed and attested shall be submitted to the Mediator who shall, with a covering letter signed by him, forward the same to the Commission.

(3) Where no agreement is arrived at or the mediator is of the view that no settlement is possible, he shall report the same to the said Commission in writing.

(4) Where no agreement is reached as in paragraph (3), proposed or discussed formula shall not affect any arbitration or subsequent court process.

24. (1) Where all the issues in dispute have been settled, the Commission shall within 5 days of receipt of any settlement, issue the settlement on all the parties to the proceedings.

(2) Where some issues have been settled and other issues remain unresolved, the Commission shall, within 10 days of receipt of such notification from the mediator, issue a settlement reflecting the resolution agreed to by the parties and giving further directive for settlement of the outstanding issues.

(3) Where none of the issues have been settled, the Commission in consultation with the parties, shall, within 21 days of such notification from the mediator, issue further directions on the procedure to be taken to settle the dispute.

25. The mediator shall -

- (a) not carry on any activity or conduct which would reasonably be considered as conduct unbecoming of a mediator;
- (b) uphold the integrity and fairness of the mediation process;
- (c) ensure that the parties involved in the mediation are properly informed and have an adequate understanding of the procedural aspects of the process;
- (d) satisfy himself that he is qualified to undertake and complete the assignment in a professional manner;
- (e) disclose any interest or relationship likely to affect impartiality or which might reflect an appearance of partiality or bias;
- (f) avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- (g) be faithful to the relationship of trust and confidentiality imposed on the office of mediator;
- (h) conduct all proceedings related to the resolution of a dispute in a fair manner;
- (i) recognise that mediation is based on principles of self-determination by the parties and that the mediation process relies upon the ability of the parties to reach a voluntary, undisclosed agreement;
- (j) maintain the reasonable expectations of the parties as to confidentiality;
- (k) refrain from promises or guarantees of results.

PART 2
Arbitration

1. (a) The party initiating recourse to arbitration (hereinafter called the “claimant”) shall give to the other party (hereinafter called the “respondent”) a notice of arbitration.

(b) Where the Commission directs the parties to arbitration these paragraphs shall apply as far as practicable.

2. Arbitral proceedings shall be deemed to commence on the date on which the respondent receives the notice of arbitration.

3. The notice of arbitration shall include the following -

(a) a demand that the dispute be referred to arbitration;

(b) the names and addresses of the parties;

(c) a reference to the arbitration clause or the separate arbitration agreement that is invoked;

(d) a reference to the contract out of or in relation to which the dispute arises;

(e) the general nature of the claim and an indication of the amount involved, if any;

(f) a description of the basic facts surrounding each issue or complaint;

(g) as far as practicable such supporting information for each issue or complaint;

(h) the relief or remedy sought;

(i) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed.

4. The parties may be represented or assisted by legal practitioners of their choice. The names and addresses of such legal practitioners must be communicated in writing to the other party. Such communication must specify whether the appointment is being made for purposes of representation or assistance.

5. If the parties have not previously agreed on the number of arbitrators (i.e. one or 3), and if within 15 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, 3 arbitrators shall be appointed.

6. If a sole arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator.

7. If within 30 days after receipt by a party of a proposal made in accordance with paragraph 6, the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the Commission.

8. Where the Commission is entitled to appoint an arbitrator the Commission shall, at the request of one of the parties appoint the sole arbitrator as promptly as possible; and in making the appointment the Commission shall use the following list-procedure, unless both parties agree that the list procedure should not be used or unless the Commission determines in its discretion that the use of the list-procedure is not appropriate for the case -

- (a) at the request of one of the parties the Commission shall communicate to both parties an identical list containing at least 3 names;
- (b) within 15 days after receipt of this list, each party may return the list to the Commission after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of preference;
- (c) after the expiration of the above period of time the Commission shall appoint the sole arbitrator from among the names approved on the lists return to it and in accordance with the order of preference indicated by the parties;
- (d) if for any reason the appointment cannot be made according to this procedure, the Commission may exercise its discretion in appointing the sole arbitrator.

9. In making the appointment, the Commission shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

10. If 3 arbitrators are to be appointed, each party shall appoint one arbitrator; and the 2 arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the panel.

11. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed the first party may request the Commission to appoint the second arbitrator.

12. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the Commission in the same way as a sole arbitrator would be appointed under paragraph 8.

13. When the Commission is requested to appoint an arbitrator pursuant to paragraph 11 or paragraph 12, the party which makes the request shall send to the Commission an affidavit together with a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The Commission may require from either party such information, as it deems necessary to fulfill its functions.

14. Where the names of one or more persons are proposed for appointment, as arbitrators, their full names and addresses shall be indicated, together with a description of their qualification.

15. A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose their circumstances to the parties unless they have already been informed by him of these circumstances.

16. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

17. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

18. A party who intends to challenge an arbitrator shall send notice of his challenge within 15 days after the appointment of the challenged arbitrator has been notified to the other party or within 15 days after the circumstances mentioned in paragraphs 16 or 17 became known to that party.

19. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitration panel. The notification shall be in writing and shall state the reason for the challenge.

20. When an arbitrator has been challenged by one party, the other party may agree to the challenge, in which case the challenged arbitrator shall withdraw from his office. This does not imply acceptance of the validity of the grounds for the challenge. The procedure provided in paragraphs 6 through to 12 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

21. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge shall be made by the Commission.

22. If the Commission sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in paragraphs 6 through to 12 except that, when this procedure would call for appointment by the Commission, the appointment of the arbitrator shall be made by the Commission which decided on the challenge.

23. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in paragraphs 6 through to 12 that was applicable to the appointment or choice of the arbitrator being replaced.

24. In the event that an arbitrator fails to act or in the event of de jure or de facto impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the proceeding paragraph shall apply.

25.1 If a presiding arbitrator is replaced, any hearings held previously shall be repeated at the discretion of the arbitration panel.

25.2 Where a sole arbitrator has been replaced the proceedings shall recommence de novo unless the parties to the arbitration agree that the notes of the previous arbitrator shall be adopted.

26. Subject to these paragraphs, the arbitration panel may conduct the arbitration in such manner, as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his or her case.

27. At any stage of the proceedings and if either party so requests the arbitration panel shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitration panel shall decide whether to hold such hearing or whether the proceedings shall be conducted on the basis documents and other materials.

28. All documents or information supplied to the arbitration panel by one party shall at the same time be communicated by that party to the other party.

29. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitration panel, having regard to the circumstances of the arbitration.

30. The arbitration panel may meet at any place it deems appropriate for the inspection of goods, other property or document. The panel shall give sufficient notice to enable the parties to be present at such inspection.

31. Within a period of time to be determined by the arbitration panel, the respondent shall communicate his response in writing to the claimant and to each of the arbitrators.

32. The respondent shall reply to the claimant's written statement. The respondent may annex to his response the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.

33. In his response or at a later stage in the arbitral proceedings if the arbitration panel decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same facts.

34. During the course of the arbitral proceedings, either party may amend or supplement his claim or response unless the arbitration panel considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration proceedings.

35. The arbitration panel shall decide which further written statements, in addition to the claim and the response, shall be required from the parties or may be presented by them and fix the periods of time for communicating such statements.

36. Each party shall have the burden of proving the facts relied on to support his claim or response, and arbitration panel may, if it considers it appropriate, require a party to deliver to the panel and the other party within such a period of time as the panel shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his claim or response.

37. At any time during the arbitral proceedings the arbitration panel may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitration panel shall determine.

38. In the event of an oral hearing, the arbitration panel shall give the parties adequate advance notice of the date, time and place thereof.

39. If witnesses are to be heard, at least 15 days before the hearing each party shall communicate to the arbitration panel and to the other party the names and addresses of the witnesses he intends to the present, the subject upon and the languages in which such witnesses will give their testimony.

40. Evidence of witnesses may also be presented in the form of written statements signed by them.

41. The arbitration panel shall determine the admissibly, relevance, materiality and weight of the evidence offered.

42. If, within the period of time fixed by the arbitration panel, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitration panel shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitration panel, the respondent has failed to communicate his response without showing sufficient cause for such failure, the arbitration panel shall order that the proceedings continue.

43. If one of the parties duly notified under these paragraphs, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitration panel may proceed with the arbitration.

44. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitration panel may make an award on the evidence before it.

45. The arbitration panel may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

46. The arbitration panel may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to re-open the hearings at any time before the award is made.

47. A party who knows that any provision of, or requirement under, these paragraphs has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance shall be deemed to have waived his right to object.

48. When there are three arbitrators, any award or other decision of the arbitration panel shall be made by a majority of the arbitrators.

49. In addition to making a final award, the arbitration panel shall be entitled to make interim, interlocutory, or partial awards.

50. The award shall be made in writing and shall be final and binding on the parties. The parties shall carry out the award without delay.

51. The arbitration panel shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

52. The arbitrators shall sign an award and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of signature.

53. The award may be made public only with the consent of both parties.

54. Copies of the award signed by the arbitrators shall be communicated to the parties and the Commission by the arbitration panel.

55. The arbitration panel shall apply the law designated by the parties as applicable to the substance of the dispute.

56. In all cases, the arbitration panel shall decide in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction.

57. If, before the award is made, the parties agree on a settlement of the dispute, the arbitration panel shall either issue an order for termination of the arbitral proceedings or, if requested by both parties and accepted by the panel, record the settlement in the form of an

arbitral award on agreed terms. The arbitration panel is not obliged to give reasons for such an award.

58. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason, the arbitration panel shall inform the parties of its intention to issue an order for termination of the proceedings. The arbitration panel shall have the power to issue such an order unless a party raises justifiable ground for objection.

59. Copies of the order for termination of the arbitral proceedings or of the arbitral award signed by the arbitrators shall be communicated by the arbitration panel to the parties and the Commission.

60. Within 30 days after receipt of the award, either party, with notice to the other party, may request that the arbitration panel give an interpretation of the award.

61. The interpretation shall be given in writing within 45 days after receipt of the request. The interpretation shall form part of the award and the provisions of paragraphs 50 and 54, shall apply.

62. Within 30 days after receipt of award, either party, with notice to the other party, may request the arbitration panel to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitration panel may within 30 days after the communication of the award make such corrections on its own initiative.

63. Such corrections shall be in writing, and the provisions of paragraph 50 and 54, shall apply.

64. Within 30 days after the receipt of the award, either party, with notice to the other party, may request the arbitration panel to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

65. If the arbitration panel considers the request of an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within 60 days after the receipt of the request.

66. When an additional award is made, the provisions of paragraphs 50 and 54, shall apply.

67. Prior to commencement of arbitration proceedings the parties to the proceedings and the arbitrator shall agree to the rate, terms and conditions relating to the remuneration of the arbitrator.

68. In addition to the provisions of paragraph 67 the arbitrator shall be entitled to -

(a) any necessary travel expenses and the cost of hotel accommodation;

(b) reasonable administrative costs associated with the conduct of the arbitration proceedings;

(c) reimbursement of any other reasonable cost arising out of or associated with the arbitration proceedings at cost without mark-up.

69. No additional fees may be charged by an arbitration panel for interpretation or correction or completion of its award under paragraphs 60 to 65.

70. Subject to the provisions of these paragraphs, the panel may regulate its own procedure.

Made this _____ day of _____, 20[].

[Name of Minister]
Minister responsible for Electronic Communications