

SAINT VINCENT AND THE GRENADINES
TELECOMMUNICATIONS (DISPUTE RESOLUTION)
REGULATIONS 2006

ARRANGMENT OF REGULATIONS

PART I

PRELIMINARY

Regulation

1. Citation and commencement
2. Interpretation
3. Application of Regulations

PART II

DISPUTE RESOLUTION

4. Procedure for seeking redress
5. Tracking by Respondent Telecommunications Provider
6. Application for assistance of Commission
7. Recording and tracking by the Commission and notice to complainant
8. Restriction on Commission's assistance
9. Response by respondent telecommunications provider
10. Notice of discontinuance and liability for costs
11. Consultations with ECTEL
12. Disposition of application
13. Expeditious resolution of disputes
14. Extension of time
15. Ongoing activities of the Commission
16. Selection of alternative dispute resolution process
17. Responsibilities of alternative dispute resolution personnel
18. Duties of the Commission relating to mediation
19. Non-discrimination and transparency
20. Responsibility of parties in alternative dispute resolution process
21. Information to ECTEL
22. Burden of proof
23. Format for presentation of information
24. Continuation of service during dispute resolution process
25. Issuance of dispute resolution order etc. upon determination by Commission
26. Issuance of dispute resolution order etc. upon determination by alternative dispute resolution personnel
27. Continuation of Networks during Dispute
28. Dispute Resolution Orders Register

29. Content of the Disputes Resolution Orders Register
30. Access to Disputes Resolution Orders Register
31. Treatment of Confidentiality Requests
32. Reporting by Commission

PART III

COMMISSION AS A TRIBUNAL

33. Guidelines for resolving disputes as a tribunal

PART IV

ARBITRATION

34. Submitting a dispute to Arbitration
35. Number of Arbitrators
36. Decision of Arbitrators
37. Conduct of Proceedings
38. Decisions to be in writing
39. Recording of Awards

PART V

COSTS

40. Payment of costs
41. Cost structure

PART VI

MISCELLANEOUS

42. Filing and service of documents
43. Effective dates of filing and service
44. Amendment of Schedules
45. Appeals

Schedules

SAINT VINCENT AND THE GRENADINES

STATUTORY RULES AND ORDERS

2007 NO. 2

Gazetted 9th January, 2007

IN EXERCISE of powers conferred by section 72 of the Telecommunications Act, 2001, the Minister makes the following Regulations:

**TELECOMMUNICATIONS (DISPUTE RESOLUTION)
REGULATIONS, 2006**

**PART I
PRELIMINARY**

Citation and commencement

1. (1) These Regulations may be cited as the Telecommunications (Dispute Resolution) Regulations 2006.
- (2) These Regulations shall come into force on the date of publication.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires –

“Act” means the Telecommunications Act, 2001;

“alternative dispute resolution personnel” means persons appointed as mediators, conciliators or arbitrators pursuant to these Regulations;

“alternative dispute resolution process” means the process, method or technique employed or requested pursuant to these Regulations by parties to resolve a dispute that is intended to avoid the delay, expense, formalities or complexity of litigation and includes arbitration, conciliation mediation and tribunal hearing;

“arbitration” means the alternative dispute resolution process 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 a dispute and to render a binding decision thereon;

“Commission” means the National Telecommunications Regulatory Commission established pursuant to the Act;

“Commission complaint tracking number” means the Commission complaint tracking number assigned pursuant to regulation 7(3) (a);

“Commission Complaint Record Register” means the Commission Complaint Record Tracking Register maintained pursuant to regulation 7(1);

“Commission Complaint Record Tracking System” means the Commission Complaint Record Tracking System kept and maintained pursuant to regulation 7 (2);

“Complainant” means an aggrieved party who files a statement of complaint pursuant to regulation 4;

“Complainant telecommunications provider” means a telecommunications provider who files a statement of complaint pursuant to regulation 4;

“Conciliation” means the settling of a dispute in an amicable manner as set out in the Second Schedule to these Regulations;

“Contracting State” means a country listed in the First Schedule;

“disputes between members of the public and telecommunications providers” include billing disputes, service order delays disputes and disputes respecting service;

“disputes between telecommunications providers” include disputes concerning interconnection, contracts, billing, service order delays and service and frequency use;

“Dispute Resolution Order Register” means the Dispute Resolution Order Register kept and maintained pursuant to regulation 28;

“dispute resolution order” means a dispute resolution order issued pursuant to regulation 25 or 26;

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

“ECTEL” means the Eastern Caribbean Telecommunications Authority established under Article 2 of the Treaty.

“licensee” means a telecommunications provider who is licensed to operate a telecommunications network or provide telecommunications services within Saint Vincent and the Grenadines.

“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 reach an agreement;

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

“Minister” means the Minister responsible for Telecommunications;

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

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

“parties” means the persons directly involved in a dispute or complaint under these Regulations;

“person” includes a body corporate or an unincorporated body;

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

“respondent telecommunications provider” means a telecommunications provider against whom a complaint has been lodged;

“retail customer” means a consumer, other than a licensee, who is obliged to pay periodically or on demand for a telecommunications service;

“statement of complaint” means a statement of complaint submitted to a telecommunications provider pursuant to regulation 4;

“telecommunications provider complaint tracking number” means the telecommunications provider complaint tracking number assigned pursuant to regulation 5(3) (b);

“Telecommunications Provider Complaint Record Tracking System” means the Telecommunications Provider Complaint Record Tracking System kept and maintained pursuant to regulation 5(2);

“Telecommunications Provider Complaint Record Register” means the Telecommunications Provider Complaint Record Register kept and maintained pursuant to regulation 5(1);

“Treaty” means the Treaty establishing ECTEL signed at St. George’s, Grenada on 4th of May, 2000 and includes the Treaty as amended from time to time;

“Tribunal” means a tribunal appointed pursuant to section 16 of the Act.

- (2) Except so far as the contrary intention appears, an expression used in the Act and in these Regulations, whether or not a particular meaning is assigned to the expression by the Act, has in these Regulations the same meaning as in the Act.

Application of Regulations

3. (1) These Regulations apply to all disputes concerning the operation of telecommunications facilities and provision of telecommunication services arising in Saint Vincent and the Grenadines including, but not limited to, complaints initiated by –
- (a) subscribers or other members of the public against a telecommunications provider;
 - (b) a licensee against another licensee;
 - (c) persons using frequency authorization.
- (2) Where appropriate references in these Regulations to the Commission include references to the staff of the Commission.
- (3) Where a dispute arises between two telecommunications providers on matters related to a duly executed interconnection agreement or a reference interconnection offer, the parties to the dispute shall, prior to seeking redress under these Regulations, first exhaust such dispute resolution process as may be incorporated in the said interconnection agreement or reference interconnection offer.
- (4) Subject to sub-regulation (3), where there is conflict between these Regulations and any other Regulations in relation to an issue provided for pursuant to these Regulations, these Regulations shall prevail.

PART II
DISPUTE RESOLUTION

Procedure for seeking redress

4. (1) Subject to the provisions of regulation 3(3), where a dispute arises between a retail customer and a telecommunications provider, or between two or more telecommunications providers, the aggrieved party, shall first seek redress from the respondent telecommunications provider, by, subject to sub-regulations (2) and (3), filing a statement of complaint with the respondent telecommunications provider.
- (2) A statement of complaint pursuant to sub-regulation (1) shall be in the form prescribed in Form 1 of the Third Schedule and shall contain as much of the following information as possible-
 - (a) the name, address, telephone number, e-mail and key contact information of the complainant;
 - (b) where available, the name, address, telephone number, e-mail and key contact information of the respondent telecommunications provider;
 - (c) a list of the disputes numbered in order so as to enable the respondent telecommunications provider to address each dispute separately;
 - (d) a brief description of the basic facts surrounding each dispute;
 - (e) as far as practicable, such supporting information for each dispute; and a statement of the desired resolution requested for each dispute.
- (3) For the purpose of sub-regulation (1), a telecommunications provider shall make available to its retail customers the form prescribed as Form 1 in the Third Schedule.

Tracking by respondent telecommunications provider

5. (1) A telecommunications provider shall keep and maintain a Telecommunications Provider Complaint Record Register for the purpose of registering statements of complaint filed pursuant to regulation 4.
- (2) A telecommunications provider shall keep and maintain a Telecommunications Provider Complaint Record Tracking System for the purpose of tracking the status of resolution of disputes between itself and its retail customers, and between itself and other telecommunications providers.
- (3) Upon receipt of a statement of complaint filed pursuant to regulation 4, the respondent telecommunications provider shall –

- (a) enter the details of the statement of complaint into its Telecommunications Provider Complaint Record Register including the name and address of the complainant and the nature of the dispute and the relief sought;
 - (b) assign to each statement of complaint a telecommunications provider complaint tracking number;
 - (c) send, within three business days, a confirmation of receipt of the statement of complaint, with the telecommunications provider complaint tracking number, to the complainant;
 - (d) respond to the complainant within thirty days, giving evidence of sincere or “good faith” effort to amicably resolve the dispute;
- (3) A telecommunication provider shall take all reasonable steps to amicably resolve a complaint filed pursuant to sub-regulation (1) within thirty days of the date of filing of the statement of complaint;
- (4) A telecommunications provider shall make monthly reports to the Commission concerning the number of statements of complaints and the nature of disputes in statements of complaints filed and the status of the resolution of such disputes.

Application for assistance of Commission

6. (1) Where after thirty days of the date of filing of a statement of complaint pursuant to regulation 4, the parties have made reasonable efforts in good faith and are unable to amicably resolve the dispute for which the statement of complaint was filed, either party may, subject to sub-regulation (2), file an application with the Commission for assistance with the resolution of the matter.
- (2) An application pursuant to sub-regulation (1), shall-
- (a) be in the form prescribed in Form 2 of the Third Schedule;
 - (b) be filed in triplicate with one copy being addressed to the Commission, the second copy to ECTEL, and the third copy to the other party to the dispute;
 - (c) contain, if any, such information or evidence describing the status of any negotiation between the parties to resolve the dispute during the thirty-day time limit; and
 - (d) contain, if any, such information as to the form of alternative dispute resolution process preferred in the circumstances.

Recording and tracking by the Commission and notice to complainant

- 7.(1) The Commission shall keep and maintain a Commission Complaint Record Register for the purpose of registering applications made pursuant to regulation 6.
- (2) The Commission shall keep and maintain a Commission Complaint Record Tracking System for the purpose of tracking the status of resolution of disputes relating to applications made pursuant to regulation 6.

(3) Upon receipt of an application filed pursuant to regulation 6, the Commission shall –

- (a) assign a Commission complaint tracking number to the application by adding a prefix to the existing telecommunications provider complaint tracking number assigned pursuant to regulation 5(3) (b);
- (b) enter the details of the application into the Commission Complaint Record Register;
- (c) send to the complainant, telecommunications provider and ECTEL a confirmation of receipt of the application with the Commission complaint tracking number.

Restriction on Commission's assistance

8. The Commission shall not provide any assistance to parties to resolve a matter unless the Commission is satisfied that the parties have made reasonable efforts in good faith to resolve the dispute.

Response by respondent telecommunications provider

9. (1) A respondent to a matter filed pursuant to regulation 6(1) shall, within ten days or such longer period as the Commission may specify, file with the Commission a response to the application together with such information describing the status of any negotiation between the parties to the dispute.
- (2) Where the respondent fails to file a response or request additional time within which to file its response, and fails to do so the Commission may request comments from that respondent; and that respondent shall submit its comments within ten days of receipt of that request or such longer period as the Commission may specify.

Notice of discontinuance and liability for costs

10. (1) The parties to a dispute may notify the Commission by notice of discontinuance in the form prescribed in Form 3 of the Third Schedule that they wish to discontinue proceedings.
- (2) Notwithstanding the provisions of sub-regulation (1), the parties shall be liable for all cost incurred up to the date of discontinuance.
- (3) A notice of discontinuance pursuant to sub-regulation (1) shall be signed by all parties to the dispute.

Consultations with ECTEL

- 11(1) Within fifteen days of receipt of an application filed pursuant to regulation 6, the Commission shall –

- (a) review the application and request such additional information from a party as may be required; and
 - (b) where appropriate, consult with ECTEL as regards the best alternative dispute resolution process to resolve the dispute.
- (2) Where pursuant to sub-regulation (1) the Commission consults with ECTEL, the Commission and ECTEL shall consider the resources respecting alternative dispute resolution that are available and any alternative dispute resolution process requested by the parties.
- (3) If the application indicates that a serious issue has arisen or a sufficient number of complaints indicate that a policy issue has arisen, the Commission shall forward such issue and documentation to ECTEL for consideration and advice concerning the likely impact on regional policy issues.
- (4) Notwithstanding sub-regulations (3), where an application is filed pursuant to regulation 6 the Commission may submit the dispute for alternative dispute resolution by arbitration –
- (a) if the parties do not agree to mediation and request the use of the arbitration process; or
 - (b) if within sixty days of the matter being submitted to the mediation process, the dispute is not resolved.

Disposition of application

12. (1) In responding to an application filed pursuant to regulation 6, the Commission shall within sixty days choose any of the following actions–
- (a) direct the parties to continue negotiations;
 - (b) request from a party such additional information as may be required;
 - (c) issue a decision;
 - (d) issue and publish an order noting a resolution and due date of implementation;
 - (e) enter the order referred to in paragraph (d) and supporting information into the Commission Complaint Record Tracking System for the necessary follow-up action;
 - (f) determine that mediation is appropriate and appoint a mediator to the dispute;
 - (g) determine the alternative dispute resolution technique other than mediation which is appropriate in the circumstances and appoint a qualified person to facilitate that process;
 - (h) decide to operate as a tribunal to resolve the dispute; or
 - (i) approve an arbitration panel to resolve the dispute.
- (2) Where the Commission decides to issue a decision pursuant to sub-regulation (1) (c) the Commission may –
- (a) determine an application on the basis of the written documentation before it;

- (b) prior to making a determination, require further information be furnished by one or more of the parties; or
- (c) issue directions on procedure if it considers an oral hearing or other form of proceeding warranted.

Expeditious resolution of disputes

13. (1) The Commission shall subject to regulation 14, use its best efforts to resolve a dispute within sixty days from the date an application is filed pursuant to regulation 6.
- (2) Without limiting the generality of sub-regulation (1), the Commission shall take steps to resolve a dispute as expeditiously as practicable having regard to—
- (a) the matters in dispute;
 - (b) preserving any agreements between the parties over issues that are not in dispute; and
 - (c) any time limits for resolving the dispute as set out in these Regulations.
- (3) The Commission may use such alternative dispute resolution process wherever practicable in resolving a dispute, but the Commission shall in resolving any dispute endeavour to first use mediation where it is appropriate, and if within the period referred to in sub-regulation (1) the dispute is not resolved by means of the alternative dispute resolution process, the Commission may subject to section 16 of the Act operate as a tribunal in order to resolve the dispute.
- (4) Where the parties agree or the Commission decides that mediation is the appropriate alternative dispute resolution process the provisions of Part 1 of the Second Schedule to these Regulations shall apply.
- (5) Where the parties agree that conciliation is the appropriate alternative dispute resolution process, the provisions of Part 2 of the Second Schedule to these Regulations shall apply.
- (6) Where the Commission decides to operate as a tribunal, the provisions of Part III of these Regulations and Part 3 of the Second Schedule to these Regulations shall apply.

Extension of time

14. (1) Notwithstanding the provisions of these Regulations, the Commission may, on the application of a party to a dispute or by its own motion, and if the Commission determines it necessary to a fair resolution and in the best interests of the public, extend the time limit for the resolution of a dispute.
- (2) The Commission shall set out –
- (a) the reasons for extending any time limit as well as the new time limit;

- (b) the actions to be taken during any extended time limit so as to encourage efficiency;
- (c) the steps to be taken if agreement is not reached within the extended time limit by means of an alternative dispute resolution process.

Ongoing activities of the Commission

15. The Commission shall–

- (a) establish a calendar or tracking process for the alternative dispute resolution process in relation to each application made pursuant to regulation 6 and notify all parties of the same ;
- (b) subject to section 26 of the Act and regulations 30 and 31, make such weekly, monthly or annual report to the Minister and to ECTEL.

Selection of alternative dispute resolution process

16. Once the appropriate alternative dispute resolution process is determined after consultation pursuant to regulation 11, the Commission shall subject to these Regulations -

- (a) appoint the appropriate mediator or arbitration panel or designate the Commission as a tribunal as the case may be;
- (b) notify the parties of the alternative dispute resolution process and personnel determined and selected;
- (c) forward the application filed pursuant to regulation 6 and other documents to the appropriate alternative dispute resolution personnel referred to in paragraph (b);
- (d) require the appropriate alternative dispute resolution personnel to establish a calendar and advise all parties and ECTEL of the calendar and process determined to be used.

Responsibilities of alternative dispute resolution personnel

17 Once appointed, the alternative dispute resolution personnel shall –

- (a) establish a process and calendar to enable resolution within sixty days;
- (b) notify all parties of the alternative dispute resolution process and calendar;
- (c) ensure that the selected alternative dispute resolution process and calendar are activated and managed in the most efficient manner possible;
- (d) request such information and resources from the Commission or ECTEL as the alternative dispute resolution personnel 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 cases of the Commission, tribunal or arbitration panel, make a decision based on the evidence and mandate a fair resolution to each issue in dispute within the sixty-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 thereof with the Commission and ECTEL.

Duties of the Commission relating to mediation

18. (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 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 on the selection of 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.

(5)The Commission shall-

- (a)provide a copy of the documentation concerning the dispute to the mediator;
- (b)establish a calendar to ensure a timely resolution of issues in dispute;
- (c)advise the parties of the calendar;
- (d)ensure that a report of the resolution of the dispute is submitted to ECTEL within thirty days from the date of resolution.

(6) Where mediation is applied but the dispute is not resolved, the Commission may on the request of either party or of its own motion recommend such other alternative dispute resolution process and continue to track developments respecting the

resolution of that dispute and report the issues in the general statistics concerning alternative dispute resolution.

- (7) The Commission shall notify ECTEL of any action taken pursuant to sub-regulation (6)

Non-discrimination and transparency

19. (1) An alternative dispute resolution process including quality of process, provided pursuant to these Regulations, shall be provided to the parties on a non-discriminatory basis.
- (2) Subject to section 26 of the Act and to regulations 15, 30 and 31, 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 alternative dispute resolution process

20. (1) During the alternative dispute resolution process, 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 such information has not been provided in accordance with this regulation, the Commission may report the matter to the Director of Public Prosecutions for necessary action pursuant to section 64 of the Act.

Information to ECTEL

21. The Commission shall inform ECTEL on a regular basis concerning –
- (a) the nature of disputes being heard;
 - (b) the alternative dispute resolution process being applied in the resolution of a dispute; and
 - (c) the impact of such alternative dispute resolution process on national and regional telecommunications policies.

Burden of proof

- 22 In an alternative dispute resolution process, except as in mediation and conciliation proceedings –
- (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 Commission or other relevant appointed dispute resolution body shall determine the accuracy and veracity of the information presented by the parties.

Format for presentation of information

23. Where in respect of the resolution of a dispute the Commission requires evidence or information in writing, the Commission may prescribe the format for presentation of such evidence or 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.

Continuation of service during alternative dispute resolution process

24. Notwithstanding any provision contained in a customer agreement, a telecommunications provider which is a party to a dispute shall not terminate its service to a subscriber or any member of the public for breach of contract or non-payment during the period of the dispute, unless:
- (a) the subscriber has been given an opportunity to be heard before the Commission;
 - (b) such termination has been specifically approved by the Commission and
 - (c) written notice of the termination has been served on the subscriber or member of the public not less than seven days prior to such termination

Formatted: Bullets and Numbering

Issuance of dispute resolution order upon determination by Commission

25. (1) Where the Commission determines an application pursuant to these Regulations, the Commission may issue a dispute resolution order –
- (a) dismissing the application;
 - (b) approving the relief sought ; or

- (c) approving the relief sought with such amendment or variation as it considers fit.
- (2) A dispute resolution order made pursuant to sub-regulation (1) shall -
 - (a) be in the form prescribed in Form 5 of the Third Schedule to these Regulations;
 - (b) specify the date within which it must be complied with; and
 - (c) be binding on the parties to the dispute;.
- (3) The Commission shall-
 - (a) register the dispute resolution order issued pursuant to this regulation in the Dispute Resolution Order Register referred to in regulation 28;
 - (b) serve the dispute resolution order on the parties to the dispute; and
 - (c) subsequent to service of the dispute resolution order pursuant to paragraph (b) comply with regulation 32(2).
- (4) The Commission shall subsequent to the issue of the dispute resolution order take such action so as to verify that the proper action is taken by the appropriate party as of the date ordered by the Commission.
- (5) A person who fails to comply with a dispute resolution order is liable -
 - (a) in the case of a telecommunications provider, to suspension or revocation of its telecommunications licence in accordance with the Act; and
 - (b) in the case of a retail customer to termination of its telecommunication service.

Issuance of dispute resolution order etc. upon determination by alternative dispute resolution personnel

26. Upon receipt of a report from alternative dispute resolution personnel the Commission shall –
- (a) review the findings and recommendations;
 - (b) subject to Part IV, issue a dispute resolution order based on the findings and recommendations referred to in paragraph (a);
 - (c) inform ECTEL on the dispute resolution order;
 - (d) serve the dispute resolution order on the parties to the dispute;
 - (e) register the information into the Commission Complaint Record Tracking System; and
 - (f) comply with regulation 32(2).

Continuation of networks during dispute

- 27.(1) Save as may be provided in any contractual arrangement between Telecommunications Providers, a dispute between telecommunication providers shall not cause the partial or total disconnection of a relevant network unless the Commission determines that such partial or total disconnection is necessary and so advises in the dispute resolution order.

- (2) Where the Commission determines that partial or total disconnection of the relevant network is necessary, the Commission shall recommend and instruct the measures to be applied so as to minimise any negative effects on the users of that network or any other network.

Dispute Resolution Orders Register

28. (1) The Commission shall keep and maintain a Dispute Resolution Order Register for the purpose of registering dispute resolution orders issued pursuant to these Regulations.
- (2) A copy of every dispute resolution order shall be kept in the Dispute Resolution Order Register.
- (3) The Dispute Resolution Order Register shall be kept and maintained by the Commission in both print form and as a database in electronic medium, and in any other form as may be prescribed by the Minister on the recommendation of ECTEL.
- (4) The Dispute Resolution Order Register shall be held at the principal office of the Commission but an authenticated copy of the Register shall be provided to ECTEL.

Content of the Dispute Resolution Order Register

29. The Dispute Resolution Order Register shall be maintained in four parts as follows—
 - (a) Part I containing a list of all disputes filed with the names of the parties, service areas of their operation, and the dates of the dispute resolution process, and shall be open to the public inspection;
 - (b) Part II containing the supporting information and documentation provided by the parties on each issue,
 - (c) Part III containing the contents of the dispute resolution order and, subject to these Regulations, related documents, which shall be open to public inspection.
 - (d) Part IV containing such information or documentation which the Commission may direct to be kept confidential.

Access to Dispute Resolution Order Register

- 30.(1) Parts I and III of the Dispute Resolution Order Register shall be open for inspection by the public on payment of the fee set out in the Fifth Schedule to the Telecommunications (Fees) Regulations 2006 and on the fulfilment of any other conditions as the Commission may consider just.
- (2) A person seeking inspection of Part I or III of the Dispute Resolution Order Register shall apply to the officer designated by the Commission who shall-

- (a) allow inspection; and
 - (b) on payment of the fee referred to in sub-regulation (1), make available extracts of the relevant portions of the Dispute Resolution Order Register.
- (3) Notwithstanding sub-regulations (1) and (2), the Commission may, through the website maintained by it, allow access to Part I or III of the Dispute Resolution Order Register.

Treatment of confidentiality requests

31. (1) In all cases of alternative dispute resolution pursuant to these Regulations including alternative dispute resolution processes such as mediation and arbitration that may not involve the Commission, a party may request that certain information provided be considered confidential.
- (2) Subject to the provisions of this regulation, where in a proceeding a document is filed with the Commission, the Commission shall place the document on the public record unless the party filing the document asserts a claim of confidentiality.
- (3) A party shall not be required to produce statements, information or give evidence in a proceeding unless that proceeding relates to the enforcement of this Act.
- (4) A party claiming confidentiality in connection with a document shall file with the Commission an abridged version of the document (that is to say, a non-confidential description of the relevant portion of the dispute and requested resolution) to be placed on the public record or his reason for objecting to the filing of an abridged version thereof.
- (5) Any claim for confidentiality made in connection with a document filed with the Commission or requested by the Commission or any party shall be accompanied by reasons therefore, and, where it is asserted that specific direct harm would be caused to the party claiming confidentiality, sufficient details shall be provided as to the nature and extent of such harm.
- (6) A claim for confidentiality referred to in sub-regulation (5) shall be placed on the public record and a copy of such a claim shall be provided on request by any party.
- (7) Where a claim for confidentiality is made in connection with a document that has not been filed by a party, the Commission may require the party to file the document and, after the document has been filed, the Commission shall review the document in confidence and deal with it in the manner as provided in sub-regulation (12).

- (8) A party wishing the public disclosure of a document in respect of which there is a claim for confidentiality may file with the Commission –
- (a) a request for such disclosure setting out the reasons for the disclosure including the public interest in the disclosure of the confidential information; and
 - (b) any material in support of the reasons for the disclosure.
- (9) A copy of a request for public disclosure of a document shall be served on the party claiming confidentiality and except where the Commission concludes that such disclosure is not required, that party will be permitted to file a reply with the Commission within ten days after the date of service of the request and shall, where a reply is filed serve a copy thereof with the party requesting disclosure.
- (10) Where the Commission of its own motion requests that a document be placed on the public record, the party claiming confidentiality shall have ten days to file a reply, unless the Commission otherwise determines.
- (11) Where the Commission is of the opinion that, based on all the material before it
- (a) no specific harm would be likely to result from disclosure; or
 - (b) if any specific harm is shown, such harm is not sufficient to outweigh the public interest in disclosing, in part or in whole, the document;
 - (c) the document shall be placed on the public record and the Commission shall record its reason for doing so and furnish a copy of its decision to the applicant.
- (12) Before making any decision not to keep requested information confidential, the Commission shall afford a hearing to the party claiming confidentiality; but such hearing may be held after the resolution of the dispute and shall not delay its timely resolution although the document for which the confidentiality claim is made may not be made public until such time as the hearing has taken place.
- (13) Whenever a party requests that any part of a dispute should be kept confidential, that portion of the dispute shall remain confidential until the Commission determines the matter otherwise.
- (14) Where the Commission is of the opinion that, based on all material before it, the specific direct harm likely to result from public disclosure justifies a claim for confidentiality, the Commission may order –
- (a) the document not be placed on the public record;
 - (b) disclosure of an abridged version of the document; or
 - (c) that the document be disclosed to parties at a hearing to be conducted in camera.

- (15) The Commission may, on the request of any party to an interconnection agreement, direct that any part of the dispute resolution process be kept confidential.

Reporting by Commission.

- 32(1) The Commission shall place the details of a dispute and such information respecting the resolution of the dispute in the appropriate weekly, monthly, quarterly or annual report to the –
- (a) Minister;
 - (b) ECTEL;
 - (c) public;
 - (d) telecommunications providers.
- (2) Notwithstanding sub-regulation (1), the Commission shall in disputes between telecommunications providers make the dispute resolution order pursuant to regulations 25 or 26 available to the public by notice published in the *Gazette* and by such other means as the Commission may consider appropriate, within ten days of the service of the dispute resolution order on the parties to the dispute pursuant to regulation 25 or 26.

PART III

COMMISSION AS A TRIBUNAL

Guidelines for resolving disputes as a tribunal.

- 33.(1) Where the Commission establishes itself as a tribunal respecting the resolution of a dispute the Commission shall, within ten days of the receipt of all materials submitted to it by the parties, review such materials and notify the parties of its findings.
- (2) The findings of the Commission pursuant to sub-regulation (1) shall include any immediate decision, calendar established for the proceedings and any other recommendations respecting the resolution of the dispute.
- (3) Where the Commission establishes itself as a tribunal respecting the resolution of a dispute, the Commission shall in exercising its duties as a tribunal take into account the -
- (a) the interest of all parties to the dispute;
 - (b) interests of the users as well as the interest of telecommunications providers,
 - (c) public interest;
 - (d) regulatory obligations or constraints imposed on any of the parties to the dispute;
 - (e) any other relevant matter.

- (4) Subject to sub-regulation (2) herein where the Commission operates as a tribunal, the provisions of Part 3 of the Second Schedule shall apply.

PART IV

ARBITRATION

Submitting a Dispute to Arbitration

- 34 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

- 35 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 shall be three.

Decisions of Arbitrators

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

Conduct of Proceedings

- 37.(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 4 of the Second Schedule shall apply.

Decisions to be in writing

- 38.(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-regulation (1) and (2) shall be delivered to the parties to the dispute and the Commission.

Recording of Awards

39. The Commission shall record the details of the award in the Dispute Resolution Order Register.

Part V

COSTS

Payment of costs

40. Except as otherwise provided, the Commission, a tribunal or ECTEL as the case may be, 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

- 41.(1) Except as otherwise provided, the costs of alternative dispute resolution shall include –
- (a) costs of filing;
 - (b) costs of the Commission, mediator, conciliator 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, a tribunal or ECTEL as the case may be, 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

Formatted: Bullets and Numbering

- (c) the manner in which the parties pursued –
 - (i) a particular allegation;
 - (ii) a particular issue;
 - (iii) the dispute as a whole.

PART VI

MISCELLANEOUS

Filing and service of documents

42. 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.

Formatted: Bullets and Numbering

Effective date of filing or service

43. (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) Subject to 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

Amendment of Schedules

44. The Minister may, on the recommendation of the Commission after consultation with ECTEL, amend any Schedule to these Regulations by Order published in the *Gazette*.

Appeals

45. (1) An appeal against a decision made under Part III 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 under Part IV 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 six weeks after the date of service of a copy of the decision on that party

FIRST SCHEDULE

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

SECOND SCHEDULE

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” efforts 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
- (2) 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 ninety 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 herein 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 three 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 name deleted by the Commission which enlisted him if:
 - (a) he resigns or withdraws his name from the list for any reason;
 - (b) he dies

- (c) he is declared insolvent/bankrupt by any court of competent jurisdiction or is declared of unsound mind;
 - (d) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;
 - (e) the Commission receives information, and after due inquiry, is satisfied, that it is not possible or desirable to keep the name of that person on the panel, provided that, before removing or deleting his 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 thereafter 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 shall fix, in consultation with the parties, a time schedule, the dates and time of each mediation session, where all the parties must to be present;
 - (b) he shall determine the place of the mediation after consultation with the parties;
 - (c) each party shall, fourteen 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 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 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, 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 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, emphasising that it is the responsibility of the parties to take decisions which affect them; he 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 sixty 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 thirty 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) The following shall apply;
- (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 (2) and (3) herein.
- (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, proposed or discussed formulas shall not affect any arbitration or subsequent court process.
- 24(1) Where all the issues in dispute have been settled the Commission shall within five days of receipt of any settlement issue serve a Dispute Resolution Order in prescribed forms 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 Dispute Resolution Order in prescribed form 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 twenty-one days of such notification from the mediator issue a Dispute Resolution Order in prescribed form giving 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 agreement;
- (j) maintain the reasonable expectations of the parties as to confidentiality;
- (k) refrain from promises or guarantees of results.

Part 2

Conciliation

1. Any dispute between parties may be submitted to conciliation by unilateral or joint application of the parties.
 2. The parties may agree to exclude or vary these paragraphs at any time.
 3. The party seeking conciliation shall send to the other party a written invitation to conciliate under these paragraphs, briefly identifying the subject matter of the dispute.
 4. Conciliation proceedings shall commence when the other party accepts the invitation to conciliate. Acceptance should be in writing.
 5. If the other party rejects the invitation, there will be no conciliation proceedings.
 6. If the party initiating the conciliation does not receive a reply within fourteen days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this case as a rejection to conciliate. If he so elects he must inform the other party accordingly.
 7. There shall be one conciliator unless the parties agree that there shall be two or more conciliators. Where there is more than one conciliator, they ought, as a general principle to act jointly.
- 8 (1) (a) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the appointment of a sole conciliator;
- (b) In conciliation proceedings with two conciliators, each party appoints one conciliator;
 - (c) In conciliation proceedings with more than two conciliators, each party appoints one conciliator and the others appointed jointly by the two conciliators.
- (2) The parties may enlist the assistance of the Commission or ECTEL in connection with the appointment of conciliators. In particular
- (a) a party may request the Commission or ECTEL to recommend the names of suitable individuals to act as conciliators

- (b) the parties may agree that the appointment of one or more conciliators be made by the Commission or ECTEL

In recommending or appointing individuals to act as Conciliators, the Commission or ECTEL shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator

- 9 The conciliator upon his appointment shall request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of his statement to the other party.
- 10 The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other information that such party deems appropriate. The party shall send a copy of this further written statement to the other party.
- 11 At any stage of the conciliation proceedings the conciliators may request a party to submit to him such additional information, as he deems appropriate.
- 12 The parties may be represented or assisted by persons of their choice. The names and addresses of these persons shall be communicated in writing to the other party and to the conciliator; such communication is to specify whether the appointment is made for purposes of representation or assistance.
- 13
 - (1) The conciliator shall assist the parties in an independent and an impartial manner in their attempt to reach an amicable settlement to their dispute.
 - (2) The conciliator shall be guided by principles of objectivity, fairness and justice giving consideration to, among other things, the rights and obligations of the parties, the business of the telecommunications industry and the circumstances surrounding the dispute, including any other previous business relationship between the parties.
 - (3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
 - (4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefore.

- 14 In order to facilitate the conduct of conciliation proceedings, the parties, or the conciliator with the consent of the parties may arrange for administrative assistance by a suitable person or institution.
- 15 The conciliator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet with or communicate with the parties together or with each of them separately.
- 16 Unless the parties have agreed upon the place where the meetings with the conciliator are to be held, the conciliator shall determine such place after consulting with each of the parties having regard to the circumstances of the conciliation proceedings.
- 17 When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation, which he considers appropriate.
- 18 The parties to a dispute shall in good faith co-operate with the conciliator and in particular, shall endeavour to comply with requests by the conciliator to submit written material, provide evidence and attend meetings.
- 19 Each party may of its own initiative or at the invitation of the conciliator submit to the conciliator suggestions for the settlement of the dispute.
- 20(a) When it appears to the conciliator that there exist elements of a settlement, which would be acceptable to the parties, he shall formulate the terms of this possible settlement and submit them to the parties for comment by a stated date. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in light of such observations. Where the conciliator receives no comment or comment from only one party the proposal shall be deemed to have been rejected.
 - (b) If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a written settlement agreement. If requested by the parties the conciliator shall draw up or assist the parties in drawing up the settlement agreement.
 - (c) The parties by signing the settlement agreement indicate that the dispute is resolved and that they are bound by the agreement.
 - (d) A copy of the settlement agreement shall be sent to the Commission.
- 21 (a) On the expiry of thirty days from the date fixed for the commencement of the conciliation proceedings, the conciliation shall stand terminated, unless the conciliator 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 fifteen days unless the parties agree to a longer extension.

- (b) The conciliator (if necessary) shall inform the Commission of the extension of time.

22. The conciliation proceedings are terminated:

- (a) by the signing of the settlement agreement by the parties on the date of the agreement; or
- (b) by written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified; or
- (c) by a written declaration of the parties addressed to the conciliator to the effect that conciliation proceedings are terminated;
- (d) by a written declaration of a party to the other and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated;
- (e) by effluxion of time as specified in paragraph 21 above.

23 The parties shall not initiate during the conciliation proceedings any other proceedings in respect of a dispute that is subject to conciliation proceedings.

24 The conciliator shall not act as arbitrator or as a representative or counsel of a party in any arbitration or judicial proceedings where he previously acted as conciliator, nor shall the conciliator be presented as a witness in any such proceedings.

25 The parties and the conciliator shall keep confidential all matters relating to the conciliation proceedings and in particular undertake not to rely on or introduce as evidence in any arbitration or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of conciliation proceedings:

- (a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (b) admissions made by the other party in the course of the conciliation proceedings;
- (c) proposals made by the conciliator;
- (d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

Part 3

Tribunal

1. Upon receipt of a complaint by the Commission the Commission shall determine:
 - (a) whether a tribunal is the appropriate mechanism for resolving that dispute and if so the Commission shall establish itself as a tribunal or
 - (b) determine what is the appropriate method of dealing with the matter.
2. Subject to the provisions of section 16 of the Act the tribunal shall comprise of three members of the Commission one of whom shall be the Chairman of the Commission.
3. A matter shall be instituted by an Applicant presenting to the Chairman of the Commission a statement of complaint (hereinafter referred to as a “complaint”) set out in the prescribed form which shall set out:-
 - (a) the name and address of the applicant and, if different, an address within Saint Vincent and the Grenadines to which he requires notices and documents relating to the proceedings to be sent;
 - (b) the names and addresses of the person or persons against whom relief is sought; and
 - (c) the relief and the grounds with particulars thereof, on which such relief is sought.
4. Where the Commission is of the opinion that the complaint does not seek or on the facts stated cannot entitle the applicant to a relief which a tribunal has power to adjudicate on, it may give notice to that effect to the applicant stating the reasons for its opinion and informing him that the complaint will not be heard.
- 5.(1) Upon determining that it is appropriate to establish itself as a tribunal the Commission shall within fourteen days of receipt of the complaint:-
 - (a) send a copy of the complaint to the respondent;
 - (b) give every party notice in writing of the complaint number (which shall constitute the title of the proceedings) and of the address to which notices and other communications to the Tribunal shall be sent; and

- (c) send to the respondent a notice in writing, which includes information, as appropriate to the complaint, as to the means and time for entering an appearance, the consequences of failure to do so, that a tribunal has been established to hear the complaint and the right to receive a copy of the decision.
- (2) The Commission shall cause to be entered such of the details of the complaint as are referred to in paragraph 3 in a Register either within twenty-eight days of receiving it, or, if that is not practicable, as soon as reasonably practicable thereafter.
- (3) The details of the complaint to be entered in the Register are:-
- (a) the complaint number;
 - (b) the date that the application was received by the Commission;
 - (c) the name and address of the applicant;
 - (d) the name and address of the respondent;
 - (e) the type of claim brought in general terms without reference to its particulars;
- 6.(1) A respondent shall, within ten days of receiving a copy of the complaint enter an appearance to the proceedings by presenting to the tribunal a notice of appearance in the prescribed form:-
- (a) setting out his full name and address and, if different, an address within the jurisdiction to which he requires notices and documents relating to the proceedings to be sent;
 - (b) stating whether or not he intends to resist the application; and
 - (c) if he does intend to resist it, setting out with sufficient particulars to show on what grounds.
- (2) Upon receipt of a notice of appearance the Commission shall cause to be sent a copy of such notice to each other party.
- (3) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except:-
- (a) to apply under paragraph 16(1) for an extension of the time appointed by this paragraph for entering an appearance;
 - (b) to make an application under paragraphs 7(3) and 16 herein for a direction requiring the applicant to provide further or better

particulars of the ground on which he relies and of any facts and contentions relevant thereto;

- (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 applicant.

7. (1) The tribunal may at any time, on the application of a party to the proceedings or of its own motion, give such directions on any matter arising in connection with the proceedings as appear to the Tribunal to be appropriate.

(2) An application under paragraph (1)-

- (a) may be made by presenting to the Tribunal a notice of application, which shall state the title of the proceedings and set out the grounds for the application; or
- (b) may be made at the hearing of the complaint.

(3) Directions under paragraph (1) may include any requirement relating to evidence, the provision of further particulars and the provision of written answers to questions put to a party by the tribunal.

(4) The tribunal may appoint the time at or within which and the place at which any act required in pursuance of this paragraph is to be done and may direct that a copy of any document furnished pursuant to any requirement imposed under this paragraph be presented to the Tribunal.

(5) The tribunal may, on the application of either of the parties to the proceedings or of its own motion: -

- (a) require the attendance of any person in the jurisdiction either to give evidence or to produce documents or both and may appoint the time and place at which the person is to attend and, if so required, to produce any document; or
- (b) require one party to grant to another such disclosure or inspection (including taking of copies) as might be granted by a court under Part 28 of the Civil Procedure Rules .

(6) Where a requirement has been imposed under paragraph (1) or (5) herein:-

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Chairman to vary or set aside the requirement. Such notice shall be given before the time at which, or as the case may be, the expiration of the time within which the requirement is to be complied with. The party making this application shall give notice of the application to all parties to the proceedings.

- (7) (a) If a requirement under paragraph (1) or (5) is not complied with, the tribunal, may, before or at the hearing, strike out the whole or part of the complaint, or as the case may be, the notice of appearance, and where appropriate direct that a respondent be debarred from defending altogether;
 - (b) but a tribunal shall not exercise its powers under this paragraph unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so, or the party has been given an opportunity to show cause orally or in writing why the powers conferred by this paragraph should not be exercised
8. (1) The Chairman shall fix the date, time and place of the hearing of the complaint and shall cause a notice of hearing as prescribed in Form 6 Notice of Hearing the Third Schedule, 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 representation, to be sent to every party.
- (2) The notice of hearing shall be sent to every party not less than fourteen days before the date fixed for the hearing except where the Chairman has agreed to a shorter time with the parties.
9. (1) A tribunal may at any time before the hearing of a complaint, on the application of a party made by notice to the Chairman 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) A tribunal shall not determine such an issue unless the Chairman 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.
10. (1) A tribunal may at any time before the hearing of a complaint on the application of a party made by notice to the Chairman 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) If a party applies for a pre-hearing review and the tribunal determines that there shall be no review, the Chairman shall cause to be sent notice of the determination as prescribed by Form 9 Notice of Determination of the Third Schedule to that party.
- (3) A pre-hearing review shall not take place unless the Chairman has caused to be sent to all parties' notice of the pre-hearing giving all parties to the proceedings an opportunity to submit representations in writing and to advance oral argument at the review.
11. (1) Any hearing of a complaint shall be heard by a tribunal constituted in accordance with paragraph 2.
- (2) If a party wishes to submit representations in writing for consideration by the tribunal he shall present his representations to the Chairman not less than ten days before the hearing and shall at the same time send a copy to the other party.
- (3) The tribunal shall, if it deems it appropriate, consider representations in writing, which have been submitted to the Chairman less than ten days before the hearing.
12. (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. 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.
- (2) Subject to paragraph (1) herein, at the hearing of the complaint a party shall be entitled to give evidence, call witnesses, question any witness and to address the tribunal.
- (3) 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; provided that 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 in pursuance of paragraph 13(2)(3) and any written response furnished to the tribunal pursuant to paragraph 8 (1).

- (4) The Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation.
- 13 (1) The decision of the tribunal shall be determined by majority vote.
- (2) At the end of the hearing the decision of the tribunal shall be by majority vote and may be given orally or reserved. The Chairman shall record and sign the decision of the tribunal.
 - (3) The Tribunal shall give reasons for its decision in a document signed by its Chairman.
 - (4) Where the Tribunal:-
 - (a) makes an award for compensation, or
 - (b) comes to any other determination by virtue of which one party is required to pay a sum to another,

the document shall also contain a statement of the amount of compensation awarded, or of the sum required to be paid, followed either by a table showing how the amount or sum has been calculated or by a description of the manner in which it was calculated.
 - (5) The Chairman of the tribunal shall cause the decision of the tribunal to be recorded in the Register.
 - (6) Clerical mistakes in the documents referred to in paragraphs (2) (3) and (4) herein or errors arising in those documents from an accidental slip or omission, may at any time be corrected by the Chairman of the Tribunal by certificate.
 - (7) If a document is corrected by certificate the Chairman of the tribunal shall cause the entry in the Register to be corrected to conform with the certificate and send a copy of any entry so corrected to each of the parties.
 - (8) Where this paragraph requires a document to be signed by the Chairman of the Tribunal but by reason of death or incapacity the Chairman is unable to sign it, the document shall be signed by the other members of the tribunal, who shall certify why the Chairman is unable to sign.

14(1) Subject to the provisions of this paragraph, a tribunal shall have power, on the application of a party to the proceedings or of its own motion, to review any decision on the grounds that:-

- (a) the decision was wrongly made as a result of an error on the part of the staff of the Commission;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (d) new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at the time of the hearing; or
- (e) the interests of justice require such a review.

(2) The tribunal may only review a decision of its own motion if:-

- (a) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review; and
- (b) such notice has been sent on or after the date of the hearing, but within fourteen days of the date on which the decision was sent to the parties.

(3) An application for the purposes of paragraph (1) herein may be made at the hearing. If no application is made at the hearing, an application may be made to the Chairman on or after the date of the hearing, but within twenty-eight days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.

(4) An application for purposes of paragraph (1) herein may be refused by the tribunal which decided the matter if in their opinion it has no reasonable prospect of success.

(5) On reviewing its decision the tribunal may confirm the decision or vary or revoke the decision; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

15. (1) Subject to the provisions of these paragraphs, the tribunal may regulate its own procedure.

(2) A tribunal may:-

- (a) if the applicant 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, decide accordingly;
 - (c) subject to paragraph (3) herein, 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 that grounds that it is scandalous, misconceived or vexatious;
 - (d) subject to paragraph (3) herein, 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 applicant or, as the case may be, respondent has been scandalous, unreasonable or vexatious; and
 - (e) subject to paragraph (3) herein 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.
- (3) Before making an order under sub-paragraph (c), (d) or (e) of paragraph 2 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.
- (4) Where a notice required by paragraph (3) 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.
- (5) The tribunal may, before determining an application under paragraph 7 or paragraph 14 require the party making the application to give notice of it to every other party. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made being an address and time specified for the purposes of the application by the tribunal.

- (6) The Chairman of a tribunal may postpone the day or times fixed for, or adjourn any hearing and vary any such postponement or adjournment.
16. (1) The Tribunal may on the application of a party or of its own motion, extend the time for doing any act appointed 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 Chairman of the tribunal a notice of application on the prescribed Form 7 Notice of Application for Extension of Time as set out in the Third Schedule, which shall state the title of the proceedings and shall set out the grounds for the application.
 - (3) The Chairman shall cause to be given notice to the parties of any extension of time granted under this paragraph.
- 17 (1) The tribunal may at any time during the course of the proceeding, on the application of any person made by notice to the Chairman 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 authorised by the tribunal, before or at the hearing, to defend on behalf of some or all of the persons so interested.
- 18 (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 Chairman 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 Chairman 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.

19 (1) The Chairman of the Commission shall cause to be created and maintained a Register of matters pending before a tribunal. This Register shall be open to inspection by the public.

- (2) The Register shall contain:-
 - (a) details of the complaint and response in accordance with paragraph 5(3) and 6;
 - (b) documents recording the decisions of tribunals and reasons therefore.

Part 4

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 thereon.
- 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 three), and if within fifteen days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three 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 thirty 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 three names;
 - (b) within fifteen 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 returned 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 three arbitrators are to be appointed, each party shall appoint one arbitrator; and the two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the panel.
11. If within thirty 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 thirty 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 qualifications.
- 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 fifteen days after the appointment of the challenged arbitrator or within fifteen 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 preceding paragraphs shall apply.

25 (1) If a presiding arbitrator is replaced, any hearings held previously shall be repeated at the discretion of the arbitration panel. Formatted: Bullets and Numbering

(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. Formatted: Bullets and Numbering

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 every stage of the proceedings each party is given a full opportunity of presenting his 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 claimants' 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 consider 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 fifteen 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 thirty 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 forty-five 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 thirty 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 thirty 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 thirty 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 hearing it shall complete its award within sixty 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(s) shall agree to the rate, terms and conditions relating to the remuneration of the arbitrator(s)
- 68 In addition to the provisions of paragraph 67 the arbitrator(s) 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.

THIRD SCHEDULE
(Form 1)
COMPLAINT FORM

Date received:.....
Telecommunications Provider's Complaint No.....
Prefixed Complaint No.....
Date sent to respondent.....

Please insert your details:

1.Mr. Mrs. Miss Ms other.....

2.First Names.....

3.Surname.....

4.Address.....

.....
5.Postal Address (if different from above)
.....

6.Address for service of documents (if different from above).....

7.Daytime telephone contact number(s).....

8.Fax number(s).....

9.Email address.....

10. 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.....

11. Please give the name and address of the Telecommunications Provider against whom this complaint is being brought

Name.....
Address.....
.....
Postal address (if different from above).....
Address for service (if different from above).....
Daytime telephone number(s).....
Fax number(s).....
Email address.....

12. Please give details/grounds of your complaint.....

.....
.....
.....
.....
.....
.....

(please use additional paper if necessary)

(Form 2)
Application to Commission

Pre-fix.....complaint number.....
[to be completed by the Commission] [the complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

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 regulation 6 of the Telecommunications (Dispute Resolution) Regulations 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]

- Commission to review documents and make a decision
- Mediation
- Tribunal
- Arbitration
- No preferred option

Dated this day of 200[]

.....
Applicant

Applicant/Applicant's representative
(Form 3)

Notice of Discontinuance

Pre-fix.....complaint number.....
[to be provided by the Commission] [The complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

- 5. Mr. [-] Mrs. [-] Miss [-] Ms [-] other [-]
.....
- 6. First Names.....
- 7. Surname.....
- 8. Address for service of documents.....

Particulars of Respondent:

- 5. Mr. [-] Mrs. [-] Miss [-] Ms [-] other [-]
.....
- 6. First Names.....
- 7. Surname.....
- 8. Address (for service of document).....

Take Notice that the parties to this dispute hereby discontinue [state here the ADR process which was utilised for resolution of the dispute] pursuant to regulation 10 of the Telecommunications (Dispute Resolution) Regulations.

Dated this day of 200[]

.....

.....

Applicant

Respondent

(Form 4)
NOTICE OF APPEARANCE

Pre-fix.....complaint number.....
[to be provided by the Commission] [The complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

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 Commission 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. If the claimant does so, you will have no right to be heard by the Commission except as to matters set out in paragraph 8(3) of Part 3 of the Second Schedule

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

(Form 5)
DISPUTE RESOLUTION ORDER

Pre-fix.....complaint number.....
[to be provided by the Commission] [the complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

- 9.Mr. Mrs. Miss Ms other
- 10.First Names.....
- 11.Surname.....
- 12.Address for service of documents

.....

Particulars of Respondent:

- 9.Mr. Mrs. Miss Ms other
- 10.First Names.....
- 11.Surname.....
- ...
- 12.Address for service of document.....

Upon hearing the parties or their representatives/reading the [insert here the documents referred to]/upon hearing the parties or representatives and reading [insert documents being referred] to the Tribunal hereby orders:

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

Dated this day of 200[]

.....

Chairman

(Form 6)
NOTICE OF HEARING

Pre-fix.....complaint number.....
[to be provided by the Commission] [The complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

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 above captioned matter shall be heard/presented before the [Mediator, Tribunal, Arbitration Panel onday theday of200[-] ato'clock in the fore/after noon.

Dated the day of 200[-]

.....
Mediator/Chairman

(Form 7)

NOTICE OF APPLICATION FOR AN EXTENSION OF TIME

Pre-fix.....complaint number.....
[to be provided by the Commission] [The complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

- 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 Applicant/Respondent in the above captioned matter has applied to [Mediator, Tribunal, Arbitration panel] 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 200[-]

.....
Mediator/Chairman

(Form 8)
NOTICE OF HEARING

Pre-fix.....complaint number.....
[to be completed by the Commission] [The complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

- 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 received an application from the Applicant/Respondent for a pre-hearing on [where applicable attach any written submissions for the review of the respondent to the application for the pre-hearing or state which part of the complaint or notice of appearance is being referred to].

Should you wish to make representation on this issue before the tribunal you may:

- 1.file written submission within 10 days of service of this notice on you or
- 2.attend before the tribunal on the date stated below where you will be heard

Take further notice that the matter shall be heard by the Tribunal onday theday of200[] ato'clock in the fore/after noon.

Dated the day of 200[]

.....
Mediator/Chairman

(Form 9)
NOTICE OF DETERMINATION

Pre-fix.....complaint number.....
[to be provided by the Commission] [the complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

- 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 Applicant/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 200[]

.....
Mediator/Chairman

(Form 10)
WITNESS SUMMONS

Pre-fix.....complaint number.....
[to be provided by the Commission] [The complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

- 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 19 of the Telecommunications Act No 1 of 2001 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 200[]

.....
Chairman

(Form 11)

ORDER
(All other orders made by tribunal)

Pre-fix.....complaint number.....
[To be provided by the Commission] [The complaint number provided by the Telecommunications Provider]

Particulars of Applicant:

- 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).....

Upon hearing the parties or their representatives OR reading the [insert here the documents referred to] OR upon hearing the parties or representatives and reading [insert documents being referred to] on an application for [insert here what the nature of the application was] the Tribunal hereby orders:

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

Dated this day of 200[]

.....
Mediator/Chairperson

Made this 3rd day of January, 2007.

HON. JERROL THOMPSON
Minister of Telecommunications
Science, Technology and Industry