

Vol. 478

Pretoria, 20 April 2005

No. 27512

CONTENTS • INHOUD

No.

Page
No. Gazette
 No.

GENERAL NOTICE

Communication, Department of

General Notice

633 Electronic Communications and Transactions Act (25/2002): Notice inviting comment on proposed alternative dispute resolution regulations drafted..... 3 27512

GENERAL NOTICE

NOTICE 633 OF 2005 DEPARTMENT OF COMMUNICATIONS

NOTICE INVITING COMMENT ON PROPOSED ALTERNATIVE DISPUTE RESOLUTION REGULATIONS DRAFTED IN TERMS OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT, 2002 (ACT NO. 25 OF 2002)

The Minister of Communications intends to make the regulations in the Schedule in terms of section 94 read with section 69 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

Interested persons are hereby invited to furnish comments on the proposed regulations, within 30 days of the date of publication of this notice at any of the following addresses:

For attention: Alf Wiltz
The Director
Legal
Department of Communications;

post to: Private Bag X860
Pretoria
0001;

or deliver to: First Floor, Block B
iParioli Office Park
399 Duncan Street
Hatfield;

or fax to: (012) 4278093;

or e-mail to: alf@doc.gov.za

Please note that comments received after the closing date may be disregarded.

The Department acknowledges Bowman Gilfillan Inc. that has assisted the Department in drafting the regulations and will continue assisting the Department in the consultation process.

Enquiries can be directed to Neil Dundas or Warren Weertman at Bowman Gilfillan Inc. at (011) 6699000 or Alf Wiltz at (012) 4278070/ 8217.

BG *Bowman Gilfillan*
Attorneys

SCHEDULE**ALTERNATIVE DISPUTE RESOLUTION REGULATIONS**

<i>Subject</i>	<i>Regulation No.</i>
CHAPTER I: PURPOSE AND SCOPE	
Introduction	1
Definitions	2
CHAPTER II: ALTERNATIVE DISPUTE RESOLUTION RULES	
Dispute resolution service	3
Evidence of abusive or offensive registrations	4
How registrant may demonstrate that domain name is not abusive registration	5
Selection of provider	6
Initiation of dispute and appointment of adjudicator	7
Fees	8
Involvement in disputes	9
Remedies	10
Notification and publication	11
Availability of Court proceedings, implementation of decision and repeat disputes	12
Transfers during dispute	13
Precedent	14
Rules modifications	15
CHAPTER III: ALTERNATIVE DISPUTE RESOLUTION PROCEDURE	
Communications	16
Dispute	17
Notification of dispute	18
Response	19
Reply	20
Appointment of adjudicator and timing of decision	21

Impartiality and independence	22
Communication between parties and adjudicator	23
Transmission of file to adjudicator	24
General powers of adjudicator	25
Language of proceedings	26
Further statements	27
Oral evidence	28
Default	29
Adjudicator decisions	30
Communication of decision to parties	31
Settlement or other grounds for termination	32
Effect of court proceedings	33
Fees	34
Exclusion of liability	35
Procedure modifications	36
CHAPTER IV: ACCREDITATION OF ALTERNATIVE DISPUTE RESOLUTION PROVIDERS	
Application procedure	37
Application	38
Short title	39

CHAPTER I Purpose and Scope

Introduction

1. The Alternative Dispute Resolution Regulations for the .za domain name space have been promulgated by the Department of Communications, and adopted by the Department of Trade and Industry and the .za domain name Authority ("*the Authority*"). These Rules set out the terms and conditions in connection with a domain name dispute between a complainant and a registrant over the registration and use of an Internet domain name registered in the .za domain name space, other than a second level domain name.

Definitions

2. In these regulations any word or expression to which a meaning has been assigned in the Electronic Communications and Transactions Act ("*the Act*") has the meaning so assigned and, unless the context otherwise indicates -

"*abusive registration*" means a domain name which either-

- (a) was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to, the Complainant's Rights; or
- (b) has been used in a manner that takes unfair advantage of, or is unfairly, detrimental to, the Complainant's Rights;

"*adjudicator*" means the adjudicator(s) appointed by a provider to decide a dispute;

"*ADR*" means alternative dispute resolution;

"*complainant*" means a person who lodges a dispute;

"*days*" means, unless otherwise stated, any day other than Saturday, Sunday or any public holiday in the Republic of South Africa;

"*decision*" means the decision reached by an adjudicator in accordance with the regulations;

"*dispute*" means a domain name dispute lodged with a provider in accordance with the regulations;

"*domain name*" means, for purposes of these regulations, an alphanumeric designation, whether interspersed with hyphens or not, that is registered or assigned in respect of an electronic address or other resource on the Internet in a sub-domain of the .za name space;

"*fee*" shall mean those fees prescribed in regulation 34;

"*geographical indicator*" means an indication which identifies goods or services as originating in a region or locality in the world, where given a quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

"*law*" means the laws of the Republic of South Africa;

"*offensive registration*" means a domain name in which the complainant cannot necessarily establish rights but the registration or use of which, is contrary to the good morals of the

community or *contra bonos mores*;

“*party*” means a complainant or registrant and “*parties*” has a corresponding meaning;

“*rules*” means the alternative dispute resolution rules as described in Chapter II, in terms of which a dispute is to be adjudicated;

“*procedure*” means procedural rules in terms of which a dispute is to be conducted as set out in Chapter III;

“*provider*” means a domain name dispute resolution service provider approved by the Authority, and published on the Authority’s website;

“*registrant*” means an applicant for or holder of a domain name;

“*reverse domain name Hijacking*” means using the regulations in bad faith to attempt to deprive a registrant of a domain name;

“*rights*” means trade mark, geographical indicators, commercial, cultural, linguistic, religious and personal rights protected under South African law, but is not limited thereto;

“*second level domain Administrator*” means an entity licensed, or to be licensed, by the Authority to operate a second level domain in the .za domain name space;

“*supplementary procedure*” means the procedure adopted by a provider to supplement the procedure, that is not inconsistent with these regulations, such as that dealing with fees, word and page limits and guidelines, the means for communicating with the provider and the adjudicator, and the form of cover sheets.

“*whois database*” shall mean a database of contact details relating to a domain name provided by a second level domain administrator

CHAPTER II

Alternative Dispute Resolution Rules

Dispute resolution service

3. (1) A registrant must submit to proceedings under these rules if a complainant asserts, in accordance with the procedure, that-

- (a) the complainant has rights in respect of a name or mark which is identical or similar to the domain name and, in the hands of the registrant the domain name is an abusive registration; or
- (b) the domain name, in the hands of the registrant, is an offensive registration.

(2) The complainant is required to prove to the adjudicator that the required elements are present on a balance of probabilities.

Evidence of abusive or offensive registrations

4. (1) A non-exhaustive list of factors, which may be evidence that the domain name is an abusive registration, is as follows:

- (a) Circumstances indicating that the registrant has registered or otherwise acquired the domain name primarily to-

- (i) sell, rent or otherwise transfer the domain name to the complainant or to a competitor of the complainant, or any third party, for valuable consideration in excess of the registrant's reasonable out-of-pocket costs directly associated with acquiring or using the domain name; or
 - (ii) intentionally block the registration of a name or mark in which the complainant has rights; or
 - (iii) unfairly disrupt the business of the complainant;
 - (iv) prevent the complainant from exercising its rights; or
 - (v) take unfair advantage of a geographical indicator to the detriment of the complainant or any third party that can lawfully use such geographical indicator;
- (b) circumstances indicating that the registrant is using, or has registered the domain name in a way that has confused people or businesses into believing that the domain name is registered to, operated or authorised by, or otherwise connected with the complainant;
 - (c) in combination with other circumstances indicating that the domain name in dispute is an abusive registration, the complainant can demonstrate that the registrant is engaged in a pattern of making abusive registrations; or
 - (d) the registrant has given false or incomplete contact details.
 - (e) the domain name was registered as a result of a relationship between the complainant and the respondent, and the complainant:
 - (i) has been using the domain name registration exclusively; and
 - (ii) paid for the registration and/or renewal of the domain name registration.

(2) An offensive registration may be indicated if the domain name advocates hatred that is based on race, ethnicity, gender or religion and/or that constitutes incitement to cause harm.

(3) There shall be a rebuttable presumption (see regulation 5(1)(d)) of abusive registration if the complainant proves that respondent has been found to have made an abusive registration in three (3) or more disputes in the 12 (twelve) months before the dispute was filed.

How registrant may demonstrate that domain name is not abusive registration

5. A non-exhaustive list of factors that may be evidence that the domain name is not an abusive registration is as follows:

- (a) Before being aware of the complainant's cause for complaint (not necessarily the dispute under these regulations), the registrant has-
 - (i) used or made demonstrable preparations to use the domain name in connection with a (good faith) offering of goods or services;

- (ii) been commonly known by the name or legitimately connected with a mark which is identical or similar to the domain name; or
 - (iii) made legitimate non-commercial or fair use of the domain name.
- (b) The domain name is used generically or in a descriptive manner and the registrant is making fair use of it.
 - (c) that the registrant has demonstrated fair use, which use may include web sites operated solely in tribute to or fair criticism of a person or business, provided that the burden shifts to the registrant to show that the domain name is not an abusive registration if the domain name (not including the first and second level suffixes) is identical to the mark in which the complainant asserts rights, without any addition; and
 - (d) In order to succeed in terms of regulation 4(3), the registrant must rebut the presumption by proving in the response that the registration of the domain name is not an abusive registration.

Selection of provider

6. The complainant must select the provider from among those approved by the Authority by submitting the dispute to that provider in the manner set out in herein.

Initiation of dispute and appointment of adjudicator

7. The procedure in regulations 17 to 21 prescribes the process for initiating and conducting a dispute and for appointing the adjudicator.

Fees

8. (1) All fees charged by a provider in connection with any dispute before a single adjudicator must be paid for by the complainant.

(2) If the parties choose to expand the number of adjudicators to more than one adjudicator, as provided in the procedure, then the fees must be apportioned between the parties in accordance with the procedure.

Involvement in disputes

9. (1) The Authority and second level domain administrators may not participate in the administration or conduct of any dispute before an adjudicator, except as required in terms of regulations 12 and 13.

(2) Neither the Authority nor its directors, officers, employees or servants, nor any adjudicator, nor any second level domain administrators may be liable to a party for anything done or omitted in connection with any proceedings under these regulations on condition that they act expeditiously to implement a decision as set out in these regulations.

Remedies

10. The possible decisions pursuant to a dispute before an adjudicator are limited to-

- (a) in the case of abusive registrations-
 - (i) the refusal of the dispute; or
 - (ii) the transfer of the disputed domain name to the complainant;
- (b) in the case of offensive registrations-
 - (i) the refusal of the dispute; or
 - (ii) the deletion and prohibition of the domain name from future registration in that particular disputed domain.
- (c) refusal of the dispute as the dispute constitutes reverse domain name hijacking.

Notification and publication

11. The provider must communicate a decision to the parties in accordance with the procedure and must provide the decision to the authority for publication on its website.

Availability of Court proceedings, implementation of decision and repeat disputes

12. (1) Nothing done in terms of these regulations prevents any party from litigating on any related matter in the High Court of the Republic of South Africa.

(2) If an adjudicator decides that the disputed domain name should be transferred to the complainant, the provider must hand the decision to the second level domain administrator to be implemented in accordance with regulation 31.

(3) A second level domain administrator must then implement the decision, as prescribed in regulation 31, unless it has come to the second level domain administrator's attention, by way of notice of motion or summons citing the second level domain administrator as a party, that either party has commenced legal action in the High Court of the Republic of South Africa concerning the domain name.

(4) If the second level domain administrator learns that legal action has commenced, it may not implement the adjudicator's decision, and the second level domain administrator must not take further action until it receives-

- (a) evidence satisfactory to the second level domain administrator of a resolution or settlement between the parties;
- (b) evidence satisfactory to the second level domain administrator that the lawsuit has been dismissed or withdrawn; or
- (c) a copy of a Court order.

(5) If a dispute has reached the decision stage on a previous occasion it will not be reconsidered by an adjudicator. If the adjudicator finds that the dispute is a resubmission of an earlier dispute he or she shall reject the dispute without a consideration of its merits.

(6) In determining whether a dispute is a resubmission of an earlier dispute, or contains a material difference that justifies a re-hearing the adjudicator shall consider the following questions:

- (a) Are the complainant, the registrant and the domain name in issue the same as in the earlier case?
- (b) Does the substance of the dispute relate to acts that occurred prior to or subsequent to the close of submissions in the earlier case?
- (c) If the substance of the dispute relates to acts that occurred prior to the close of submissions in the earlier case, are there any exceptional grounds for the rehearing or reconsideration, bearing in mind the need to protect the integrity and smooth operation of the regulations?
- (d) If the substance of the dispute relates to acts that occurred subsequent to the close of submissions in the earlier dispute, acts on which the re-filed dispute is based should not be, in substance, the same as the acts on which the previous dispute was based.

Transfers during a dispute

13. (1) A registrant may not transfer or delete a domain name registration whilst proceedings under these regulations are ongoing, except as a result of a written settlement agreement reached between the parties, a copy of which written settlement has been delivered to the provider who must issue relevant instructions to the second level domain administrator after having confirmed the validity of the written settlement agreement.

(2) A registrant may update technical information, such as name servers, for the domain name provided that such updates do not result in the transfer or deletion of a domain name subject to a dispute. In the event that such update does result in the transfer or deletion of the domain name, then the registrant is liable for any damages that may arise.

(3) Once a second level domain administrator has been informed of a domain name dispute, the second level domain administrator must take all reasonable steps to ensure that the ownership of a domain name is neither transferred, nor allowed to be intentionally deleted during the course of a dispute.

Precedent

14. (1) Adjudicators must consider and be guided by previous decisions made in terms of these regulations.

(2) Adjudicators must include a list of decisions (local or international), if any, referred to, under the heading "decisions considered", in their decisions.

Rules modifications

15. (1) These rules may be changed from time to time by notice in the Gazette.

(2) If these rules have already been invoked by the submission of a dispute to a provider, then the version of the rules in effect at the time it was invoked applies to the dispute.

CHAPTER III

Alternative Dispute Resolution Procedure

Communications

16. (1) When a provider receives a dispute, the provider must use all reasonable means to forward a copy of the dispute to the registrant. The registrant is deemed to have been notified of the dispute when the provider-

- (a) has sent a hardcopy of the dispute to the registrant's postal, physical or facsimile address as displayed on the relevant second level domain administrator's WHOIS database; and
- (b) has sent the dispute in electronic form (including annexes to the extent available in that form) by e-mail to the e-mail addresses for the registrant, technical, administrative, and billing contacts.

(2) The parties can select a preferred means to receive communications from the provider or other parties. When sending communications, the parties and the provider must retain-

- (a) a confirmation of transmission, when communications are sent by facsimile;
- (b) a receipt, when communications are sent by means of registered post or courier; or
- (c) a record of the transmission of communications sent electronically.

(3) Any communication to the provider or the adjudicator must comply with the provider's supplementary procedure.

(4) Communications must be made in the language prescribed in regulation 26. E-mail communications must, if possible, be sent in plain text.

(5) Either party may update its contact details by notifying the provider and the second level domain administrator.

(6) Unless otherwise stated, or decided by an adjudicator, all communications sent in terms of this procedure are deemed to have been sent-

- (a) on the date shown on the confirmation of transmission, if sent by facsimile;
- (b) on the date marked on the receipt, if sent by registered post or courier service; or
- (c) on the date that the communication was transmitted, provided that the date of transmission is verifiable, if sent electronically.

(7) Unless otherwise stated, all time periods start to run and be calculated from the date provided for in terms of regulation 16(6).

(8) When sending any communication-

- (a) an adjudicator must send a copy to the provider;

- (b) the provider must send a copy to all the parties to the dispute; and
- (c) a party must send a copy to the provider and the other party.

(9) It is the responsibility of the sender of any communication to retain a record of the fact that the communication has been transmitted. These records must be available for inspection by affected parties and for reporting purposes.

(10) If a party is unable to successfully send any communication, the party must immediately notify the provider of the fact. The provider must then decide how any further correspondence or response will be directed to the relevant party.

Dispute

17. (1) Subject to a provider's supplementary rules, any person or entity may initiate a dispute by submitting hard copies of a dispute that complies with the regulations to any provider. If a provider's ability to accept disputes is suspended the complainant may submit the dispute to another provider.

(2) Subject to a provider's supplementary rules, the dispute must be submitted in both electronic (as far as possible) and paper format (in triplicate), the latter to be attested to by a Commissioner of Oaths, and must -

- (a) request that the dispute be submitted to an adjudicator for adjudication;
- (b) provide the name, physical address and e-mail addresses, and the telephone and fax numbers of the complainant and of any representative authorised to act for the complainant in the dispute. The physical address specified in terms of this paragraph must also be a legitimate address that parties can use for the service of Court processes and must be an address within the Republic of South Africa;
- (c) specify a preferred method for transmission of material or communications sent in both paper format and electronic copy;
- (d) specify whether one or three adjudicators must decide the dispute and specify how payment of the initial fee has been made with accompanying proof of payment;
- (e) provide the name of the registrant and all contact information of the registrant known to the complainant or any representative of registrant. This may include contact information based on pre-dispute dealings. There must be sufficient detail for the provider to be able to send a copy of the dispute to the registrant as provided for in terms of regulation 16(1);
- (f) specify the domain name(s) that is the subject of the dispute. The dispute may relate to more than one domain name, provided that the same registrant registered the domain names;
- (g) identify the second level domain administrator with whom the domain name(s) is registered at the time the dispute is filed;
- (h) specify, in sufficient detail, the rights on which the dispute is based for the adjudicator to be able to reach a decision. Where the

complainant relies on registered rights (for example, trade mark rights) the complainant must provide full details of the registered right;

- (i) detail reasons why the Domain Name, in the hands of the Registrant is an Abusive Registration and/or an Offensive Registration, and the complainant's rights in accordance with regulation 4(j) specify, in accordance with the rules, the remedies sought;
- (j) identify any other legal proceedings that have been initiated or terminated relating to any of the domain name(s) that are the subject of the dispute;
- (k) state that the complainant submits to the jurisdiction of the High Court of the Republic of South Africa;
- (l) conclude with the following statement followed by the signature of the complainant or its authorised representative and a Commissioner of Oaths:

"The complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution are solely against the registrant and waives all such claims and remedies against (a) the provider and adjudicators, except in the case of deliberate wrongdoing, (b) the second level domain administrator, and (c) the Authority as well as its directors, officers, employees, and agents."

"The complainant certifies that the information contained in this dispute is, to the best of complainant's knowledge, both complete and accurate, that this dispute is not being used for any improper purpose, such as to harass the registrant, and that the assertions in this dispute are warranted under the procedure and under the applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

"The registrant has acknowledged that he or she knows and understands the contents of this response, which was signed and sworn to before me at (*insert place*) on this the (*insert day*) day of (*insert month*) 20__, the regulations contained in Government Notice No. R1648 of 19 August 1977, as amended, having been complied with";
- (m) annex any documentary or other evidence, excluding all "without prejudice" communications, together with a schedule indexing such evidence;
- (n) be accompanied by any evidence available in electronic copy; and
- (o) comply with any word limitation imposed by a provider.

Notification of dispute

18. (1) The provider must ensure that the dispute complies with the provisions of the regulations, and that the initial fee has been paid. If the dispute complies with the regulations, the provider must forward a copy of the dispute (together with the explanatory cover sheet prescribed by the provider's supplementary rules) to the registrant, in accordance with regulation 16(1) and comply with regulation 18(4)

(2) If the provider finds that the dispute does not comply with the regulations, the provider must immediately notify the complainant of the nature of the non-compliance. The complainant has 5 (five) days within which to correct any non-compliance. If the complainant does not correct the non-compliance within the 5 (five) days, the dispute is deemed to have been withdrawn. The complainant is then required to submit a new dispute.

(3) The dispute resolution commences once the provider has complied with regulation 18(1).

(4) The provider must immediately notify the complainant, the registrant, the concerned second level domain administrator, and the Authority of the date of commencement of the dispute.

Response

19. (1) Within 20 days of the date of commencement of the dispute the registrant must submit a response to the provider.

(2) Subject to a provider's supplementary rules, the dispute must be submitted in both electronic (as far as possible) and paper format (in triplicate), the latter to be attested to by a Commissioner of Oaths, and must-

- (a) respond to the statements and allegations contained in the dispute and detail any grounds to prove that the domain name is neither an abusive registration nor offensive registration;
- (b) provide the name, address and e-mail addresses, and the telephone and fax numbers of the registrant and of any representative authorised to act for the registrant in the dispute. The address specified in terms of this paragraph must also be a legitimate address that parties can use for the service of Court processes and must be an address within the Republic of South Africa;
- (c) specify a preferred method for transmission of material or communications sent in both paper format and electronic copy;
- (d) if the complainant has elected a single adjudicator in the dispute (see regulation 17(2)(d)), state whether the registrant elects instead to have the dispute decided by three adjudicators;
- (e) identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the dispute;
- (f) state that paper and electronic formats of the response have been sent or transmitted to the complainant, in accordance with regulation 16(2);
- (g) conclude with the following statement followed by the signature of the registrant or its authorised representative and a Commissioner of Oaths:

"The registrant certifies that the information contained in this response is, to the best of registrant's knowledge, both complete and accurate, that this response is not being presented for any

improper purpose, such as to harass the complainant, and that the assertions in this response are warranted under the procedure and under the applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

The registrant has acknowledged that he knows and understands the contents of this response, which was signed and sworn to before me at (*insert place*) on this the (*insert day*) day of (*insert month*) 20__, the regulations contained in government notice no. R1648 of 19 August 1977, as amended, having been complied with.

- (h) annex any documentary or other evidence, together with a schedule indexing such evidence;
- (i) be accompanied by any evidence available in electronic copy; and
- (j) comply with any word limitation imposed by a provider.

(3) If a complainant has elected to have the dispute decided by a single adjudicator and the registrant elects three adjudicators, the registrant is required to pay half of the applicable fee for three adjudicators as provided for in the provider's supplementary rules. This payment must be made together with the submission of the response to the provider. In the event that the required payment is not made, a single adjudicator must decide the dispute.

(4) At the request of the registrant, the provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written agreement between the parties, which agreement is subject to approval by the provider.

(5) If a registrant does not submit a response the adjudicator must decide the matter based on the dispute only.

Reply

20. (1) Within five (5) days of receiving the response from the provider, the complainant may submit to the provider a reply to the registrant's response. If a reply is submitted it must be submitted in paper and electronic format and comply with a provider's supplementary rules.

(2) Upon the expiry of these 5 days, but no later than 2 days thereafter, the provider will appoint an adjudicator in accordance with regulation 21.

Appointment of adjudicator and timing of decision

21. (1) Each provider must maintain and publish a publicly available list of adjudicators and their qualifications.

(2) If neither the complainant nor the registrant has elected three Adjudicators (regulation 17(2)(d) and 19(2)(d)), the provider must appoint a single adjudicator from its list of adjudicators, within five days following receipt of the response by the provider, or the lapse of the time period for the submission of the response.

(3) The fees for a single adjudicator must be paid entirely by the complainant in accordance with regulation 34.

(4) If either the complainant or the registrant elects to have the dispute decided by three adjudicators, the provider must appoint three adjudicators in accordance with the

procedures identified in sub-regulation (5). The fees for three adjudicators must be paid in its entirety by the complainant, except where the election for three adjudicators was made by the registrant, in which case the applicable fees will be shared equally between the parties.

(5) In the event that either the complainant or the registrant elects to have a dispute decided by three adjudicators, the provider must appoint the adjudicators from its list of adjudicators.

(6) Once an adjudicator is appointed, the provider must notify the parties of the adjudicator appointed and the date by which, in the absence of exceptional circumstances, the adjudicator must forward a decision to the provider.

Impartiality and independence

22. (1) An adjudicator must be impartial and independent and must have disclosed to the provider any circumstances affecting the adjudicator's impartiality or independence before accepting an appointment to decide a dispute.

(2) If, at any stage during the dispute, new circumstances arise that could affect the impartiality or independence of an adjudicator, that adjudicator must promptly disclose such circumstances to the provider. In such event, the provider has the discretion to appoint an alternate adjudicator.

Communication between parties and adjudicator

23. No party, or anyone acting on a party's behalf, may have any unilateral communication with the adjudicator. All communications between a party and the adjudicator must be sent through the provider in the manner determined by the provider's supplementary rules.

Transmission of file to adjudicator

24. (1) The provider must forward the dispute, response, and reply, if any, to the adjudicator as soon as an adjudicator is appointed.

(2) In the case of disputes being decided by three adjudicators, the dispute and response, if any, must be forwarded to the adjudicators as soon as the provider has appointed the last adjudicator.

General powers of adjudicator

25. (1) The adjudicator must conduct the dispute in such manner, as he or she considers appropriate in accordance with the regulations.

(2) In all cases, the adjudicator must ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.

(3) The adjudicator must ensure that the dispute takes place as expeditiously as possible. The adjudicator may, at the request of a party or of his or her own accord, extend, in exceptional cases, a period of time fixed by this procedure or by the provider.

(4) The adjudicator must determine the admissibility, relevance, materiality and weight of the evidence.

(5) An adjudicator must decide a request by a party to consolidate multiple domain name disputes in accordance with the regulations.

Language of proceedings

26. (1) Unless otherwise agreed by the parties, the dispute and the response must be prepared in English.

(2) If a party wishes to submit a dispute or response in any other official South African language, other than English, the Provider may arrange translation at the expense of that party and suspend proceedings until he or she receives the translation of the dispute or response.

Further statements

27. In addition to the dispute, the response, and the reply, the adjudicator may request, in its sole discretion, further statements or documents from either of the parties.

Oral evidence

28. There may be no in-person hearings.

Default

29. (1) In the absence of exceptional circumstances, if a party does not comply with any of the time periods established by this procedure or the adjudicator, the adjudicator must proceed to a decision on the dispute.

(2) In the absence of exceptional circumstances, if a party does not comply with any provision of, or requirement under, this procedure or any request from the adjudicator, the adjudicator may draw such inferences there from, as it considers appropriate.

Adjudicator decisions

30. (1) An adjudicator must decide a dispute on the basis of the dispute and response, if any, submitted and in accordance with the regulations and any rules and principles of law that it deems applicable.

(2) In the absence of exceptional circumstances, the adjudicator must forward its decision on the dispute to the provider within 14 days of its appointment pursuant to regulation 21.

(3) In the case of a dispute being decided by three adjudicators, a decision must be made by a majority of the adjudicators.

(4) The decision must be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the adjudicator(s).

(5) Decisions and dissenting opinions must comply with the guidelines as to length set forth in the provider's supplementary rules. Any dissenting opinion must accompany the majority decision.

Communication of decision to parties

31. (1) Within three days after receiving the decision from the adjudicator, the provider must communicate the full text of the decision to each party, and the Authority.

(2) After 5 days of notifying the parties and the authority of the decision, the provider will forward the decision to the second level domain administrator.

(3) Upon receiving the decision from the provider, the second level domain administrator will wait a further 5 days before implementing the decision.

(4) The second level domain administrator will implement the decision after the expiry of the 5-day waiting period pursuant to regulation 31(3) above, but not later than 2 days thereafter.

(5) A decision must be published in full except those parts ruled to be confidential by the adjudicator.

Settlement or other grounds for termination

32. (1) If, before the adjudicator's decision, the parties agree on a settlement, the adjudicator must terminate the dispute.

(2) If, before the adjudicator's decision is made, it becomes unnecessary or impossible to continue the dispute for any reason, the adjudicator must terminate the dispute, unless a party raises justifiable grounds for objection within a period of time to be determined by the adjudicator.

Effect of Court proceedings

33. (1) In the event of any legal proceedings initiated during a dispute in respect of a domain name that is the subject of the dispute, the adjudicator must suspend the dispute.

(2) In the event that a party initiates any legal proceedings during an alternative dispute resolution dispute it must promptly notify the adjudicator and the provider in accordance with the rules.

Fees

34. (1) The complainant must pay to the provider an initial fixed fee in the sum of R10,000-00 for one adjudicator to decide the dispute in accordance with regulation 21(3) or a fixed fee in the sum of R24,000-00 for three adjudicators to decide the dispute in accordance with regulation 21(4).

(2) If a registrant elects in terms of regulation 17(2)(d) to have the dispute decided by three adjudicators, rather than a single adjudicator elected by the complainant, the registrant and the complainant must pay the provider R12,000-00 each.

(3) No action may be taken in accordance with regulation 18(1) by the provider on a dispute until it has received the initial fee from the complainant.

(4) If the provider has not received the fee within 10 days of receiving the dispute, the dispute is deemed to be withdrawn and terminated.

(5) A complainant may approach the Authority, in writing, for financial assistance to lodge a dispute with a provider, which assistance may be considered at the discretion of the Authority taking into account the financial means of the complainant.

(6) Upon receipt of the fees required in terms this regulation, the provider must immediately pay 10% of the fees to the Authority, which fees the Authority must use exclusively to fund other complainants seeking financial assistance.

Exclusion of liability

35. Except in cases of malicious intent or gross negligence, neither the provider nor an adjudicator is liable to a party for any act or omission in connection with any dispute under this procedure.

Procedure modifications

36. (1) These procedures may be changed from time to time by notice in the Gazette.

(2) If these procedures have already been invoked by the submission of a dispute to a provider, then the version of the procedure in effect at the time it was invoked applies to the dispute.

CHAPTER IV

Accreditation of Alternative Dispute Resolution Providers

Application procedure

37. (1) Applicants for accreditation as ADR providers must familiarise themselves with the regulations.

(2) Applicants must then submit an application via e-mail (*insert address*) or postal mail to:

(*insert address*)

Application

38. (1) Applications should contain-

- (a) an overview of an applicant's capabilities and background in providing alternative dispute resolution services, including a description of the applicant's track record of handling the clerical aspects of expedited alternative dispute resolution proceedings, if any;
- (b) a list of the names and qualifications of the adjudicators the applicant proposes to include on its published list and a description of the screening requirements applicant has used in selecting adjudicators to be included on its list;
- (c) a description of training and educational measures the Applicant proposes to employ for listed Adjudicators with respect to domain name disputes and the regulations;
- (d) a commitment by the applicant not to prevent or discourage any of its adjudicators from serving as adjudicators for other providers;
- (e) a copy of the applicant's proposed supplementary rules, if any, including the applicant's proposed fee schedule;
- (f) documentation of applicant's proposed internal operating procedures. If requested, the Authority must hold this documentation in confidence;

- (g) a proposed schedule for applicant's implementation of its programme for administering disputes under the rules, including a statement of applicant's administrative capacity in terms of number of disputes initiated on a monthly basis;
- (h) a statement of any requested limitations on the number of disputes that applicant handles, either during a start-up period or on a permanent basis;
- (i) a description of how the applicant proposes to administer disputes, including its interactions with parties to the dispute, second level domain administrators, the Authority, and other approved providers; and
- (j) a description of how the applicant intends to publish decisions of adjudicators in disputes it administers and a commitment to provide the Authority with copies of all decisions of adjudicators not published.

(2) In general, the Authority examines the applications to determine whether the applicant has demonstrated its ability to handle proceedings in an expedited, online context in an orderly and fair manner. Attributes that are especially important include:

- (a) applicant must have a track record in competently handling the clerical aspects of ADR proceedings. The Authority considers good administrative capabilities an essential requirement of a provider. In the absence of a well-established track record in administrative capabilities, a detailed plan for providing those capabilities must be submitted
- (b) applicant must propose a list of highly qualified neutral persons who have agreed to serve as adjudicators. Applicant's list should include at least five persons. Applicants are expected to thoroughly train the listed adjudicators concerning the regulations, the technology of domain names, and the basic legal principles applicable to domain name disputes;
- (c) applicant's supplementary rules and internal procedures must demonstrate that applicant understands the workings of the regulations; and
- (d) both the provider and its panel of adjudicators must be representative of women, disabled and historically disadvantaged individuals.

Short title

39. These regulations are called the Alternative Dispute Resolution Regulations and come into force on the date of their publication in the *Gazette*.