DEPARTMENT OF TELECOMMUNICATIONS AND POSTAL SERVICES

NO. 1246 **10 NOVEMBER 2017**

ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT, 2002

(ACT NO. 25 OF 2002)

AMENDMENT OF THE ALTERNATIVE DISPUTE RESOLUTION REGULATIONS

I, Dr Siyabonga Cyprian Cwele, Minister of Telecommunications and Postal Services, hereby, in terms of section 69 read with section 94 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), amend the Alternative Dispute Resolution Regulations published in Government Notice No. R. 1166, Government *Gazette* 29405 on 22 November 2006, as amended by Government Notice No. 1228, Government *Gazette* 39504 on 11 December 2015, as indicated in the Schedule.

Dr Siyabonga Cyprian Cwele, MP
Minister of Telecommunications and Postal Services

SCHEDULE

AMENDMENT OF THE ALTERNATIVE DISPUTE RESOLUTION REGULATIONS

1. Amendment of Arrangement of Regulations
The Arrangement of Regulations which occur before Regulation 1 of the Alternative Dispute Resolution Regulations is hereby amended—

(a) by the substitution for item 7 of the following item:

"Dispute procedure **7**"; and

(b) by the insertion after item 19 of the following item:

"Informal mediation **19A**".

2. Amendment of regulation 1
Regulation 1 of the Alternative Dispute Resolution Regulations is hereby amended by the insertion after the definition of "decision" of the following definition:

"'**informal mediation**' means impartial mediation which the Authority conducts to facilitate a resolution acceptable to both Parties;".

3. Amendment of regulation 4
Regulation 4 of the Alternative Dispute Resolution Regulations is hereby amended –

(a) by the substitution for subregulation (3) of the following subregulation:

"(3) There shall be a rebuttable presumption of abusive registration if the complainant proves that the registrant has been found to have made an abusive registration in three or more disputes in the two years before the dispute was filed."; and

(b) by the insertion of the following subregulation:

"(4) In order to succeed with rebutting the presumption of abusive registration as contemplated in regulation 4(3), the registrant must prove that the registration of the domain name is not an abusive registration.".

4. Substitution of regulation 5
The following regulation is hereby substituted for regulation 5 of the Alternative Dispute Resolution Regulations:

"**5.** Factors, which may indicate that the domain name is not an abusive registration, include-

(a) before being aware of the complainant's cause for complaint, 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; and

(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 of proof 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.".

5. Substitution of regulation 7

The following regulation is hereby substituted for regulation 7 of the Alternative Dispute Resolution Regulations:

"Dispute procedure

7. The procedure in Chapter III prescribes the process for initiating, conducting and concluding a dispute.".

6. Substitution of regulation 9

The following regulation is hereby substituted for regulation 9 of the Alternative Dispute Resolution Regulations:

"**9.** (1) The possible decisions pursuant to a dispute before an adjudicator are limited to -

(a) in the case of abusive registrations the refusal of the dispute or the transfer of the disputed domain name to the complainant;

(b) in the case of offensive registrations the refusal of the dispute or the deletion and prohibition of the domain name from future registration;

(c) a refusal of the dispute as the dispute constitutes reverse domain name hijacking;

(d) cancellation of the disputed domain name as contemplated in subregulation (3).

(2) If three disputes from a Complainant were refused within a period of two years based on reverse domain name hijacking, the provider will not accept any further complaints from the complainant for a period of two years from the date of the last decision, except on good cause shown.

(3) In the case of abusive registrations, the cancellation of the domain name may be considered by the adjudicator when the complainant and a third party have rights or registered rights and it is a more appropriate remedy than the refusal or transfer of the domain name.".

7. Amendment of regulation 11

Regulation 11 of the Alternative Dispute Resolution Regulations is hereby amended–

(a) by the insertion after subregulation (1) of the following subregulation:

"(1A) Any party that institutes legal action on any related matter in the High Court of the Republic of South Africa must inform the second level domain administrator in writing either by facsimile, registered post or courier."; and

(b) by the substitution for subregulation (3) of the following subregulation:

"(3) A second level domain administrator must implement the decision, as contemplated by regulation 30, unless the second level domain administrator has been informed as contemplated in subregulation (1A) that either party has commenced legal action in the High Court of the Republic of South Africa concerning the domain name.".

8. Amendment of regulation 16

Regulation 16 of the Alternative Dispute Resolution Regulations is hereby amended by the substitution in subregulation (2) for paragraph (l) of the following paragraph:

"(l) conclude with the following statement followed by the signature of the complainant or his or her authorised representative and be administered as an oath or affirmation by a Commissioner of Oaths, or person holding a similar public office when signing the complaint in a foreign country:

"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 these Regulations and under applicable law.

_____

Signature of Complainant

Date:
Place:

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down her/his answers in his/her presence:

(i) Do you know and understand the contents of the declaration?
Answer:
(ii) Do you have any objection to taking the prescribed oath or affirmation?
Answer:
(iii) Do you consider the prescribed oath or affirmation to be binding on your conscience?
Answer:

I certify that the deponent has acknowledged that she/he knows and understands the contents of this declaration. The deponent utters the following words: "I swear that the contents of this declaration are true, so help me God." / "I truly affirm that the contents of the declaration are true". The signature/mark of the deponent is affixed to the declaration in my presence.

_____

Commissioner of Oaths/ Person holding similar public office
Full Name:
Designation:
Area:
Office held *ex officio*:
Business address:
Date:
Place:"".

9. Amendment of regulation 18

Regulation 18 of the Alternative Dispute Resolution Regulations is hereby amended –

(a) by the substitution in subregulation (2) for paragraph (f) of the following paragraph:

"(f) conclude with the following statement followed by the signature of the registrant or his or her authorised representative and be administered as an oath or affirmation by a Commissioner of Oaths, or person holding a similar public office when signing the response in a foreign country:

"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 these Regulations and under applicable law.

_____

Signature of Registrant

Date:
Place:

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down her/his answers in his/her presence:

(i) Do you know and understand the contents of the declaration?
Answer:
(ii) Do you have any objection to taking the prescribed oath or affirmation?
Answer:

(iii) Do you consider the prescribed oath or affirmation to be binding on your conscience?
Answer:

I certify that the deponent has acknowledged that she/he knows and understands the contents of this declaration. The deponent utters the following words: "I swear that the contents of this declaration are true, so help me God." / "I truly affirm that the contents of the declaration are true". The signature/mark of the deponent is affixed to the declaration in my presence.

_____

Commissioner of Oaths/ Person holding similar public office
Full Name:
Designation:
Area:
Office held *ex officio*:
Business address:
Date:
Place:"";

(b) by the substitution for subregulation (3) of the following subregulation:

"(3) If the registrant does not submit a response, the adjudicator must decide the matter based on the dispute contemplated in regulation 16(1) and issue a summary decision in accordance with regulation 9(1)(a) or (b)."; and

(c) by the insertion after subregulation (3) of the following subregulations:

"(4) A summary decision will, however, only be granted by the adjudicator if the following requirements are met-

(a) that the registrant has been notified of the dispute in accordance with regulation 15(1);

(b) that the complainant has to the reasonable satisfaction of the adjudicator shown that he or she has rights in 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 offensive registration; and

(c) that there are no other factors or circumstances present in the dispute that would unfairly deprive the registrant of the domain name.

(5) A summary decision is regarded as a decision as contemplated in regulation 29.".

10. Amendment of regulation 19
Regulation 19 of the Alternative Dispute Resolution Regulations is hereby amended-

(a) by the substitution for subregulation (1) of the following subregulation:

"(1) Within five days of receiving the response from the provider, the complainant may submit a reply to the registrant's response to the provider, which the provider must forward to the registrant."; and

(b) by the substitution for subregulation (3) of the following subregulation:

"(3) Upon the expiry of the five days, but no later than two days thereafter, the provider will inform the Authority to conduct informal mediation in accordance with regulation 19A.".

11. Insertion of regulation 19A

The following regulation is hereby inserted in the principal Act, after regulation 19:

"**Informal mediation**

19A. (1) Within two days of being informed by the provider as contemplated in regulation 19(3), the Authority will begin to conduct informal mediation. Informal Mediation will be conducted in a manner which the Authority, in their sole discretion, considers appropriate. No informal mediation will occur if the Registrant does not file a response.

(2) Negotiations conducted between the Parties during informal mediation (including any information obtained from or in connection to negotiations) shall be confidential, that is they will not be shown to the adjudicator. Neither the Authority nor any Party may reveal details of such negotiations to any third parties unless a court of competent jurisdiction orders disclosure, or the Authority or either Party are required to do so by applicable laws or regulations. Neither Party shall use any information gained during mediation for any ulterior or collateral purpose or include it in any submission likely to be seen by any adjudicator or judge in this dispute or any later dispute or litigation.

(3) If the Parties reach a settlement during informal mediation then the existence, nature and terms of the settlement shall be confidential, unless the Parties specifically agree otherwise or a court of competent jurisdiction orders otherwise.

(4) No binding verbal agreements can be reached as part of the informal mediation: any settlement reached by the Parties must be in writing or similar electronic form to be enforceable.

(5) If the Parties reach a settlement and agree that a disputed domain name should be transferred to the complainant, the Authority must communicate the decision to the second level domain administrator to be implemented as contemplated by regulation 30(4).

(6) If the Parties do not achieve an acceptable resolution through informal mediation within five days, the Authority must within two days inform the provider to appoint an adjudicator in accordance with regulation 20, which appointment must be done by the provider within two days.

(7) No Party may ask the Authority (including their directors, officers, employees, contractors, agents) to reveal information or materials gained as a result of any informal mediation under these Regulations unless such disclosure has been ordered by a court of competent jurisdiction. Neither Party shall call the Authority (including their directors, officers, employees, contractors, or agents) as a witness (either in person or to produce documents or other materials) in any proceedings which arise from, or are in connection with, the matters discussed in the mediation.".

12. Amendment of regulation 21

Regulation 21 of the Alternative Dispute Resolution Regulations is hereby amended by the insertion of the following subregulation:

"(4) Any party may inform the provider of circumstances that affect or may affect the impartiality or independence of the adjudicator, following which the provider should determine whether an alternate adjudicator should be appointed.".

13. Amendment of regulation 32

Regulation 32 of the Alternative Dispute Resolution Regulations is hereby amended-

(a) by the substitution for subregulation (1) of the following subregulation:

"(1) Either party shall have the right to appeal a decision by submitting a statement of intention to appeal within four days after the receipt of the decision as contemplated in regulation 30(1), together with the appeal fee provided for in regulation 34(3), which must within 15 days be followed by an appeal notice: Provided that only a decision by a single adjudicator, and not a decision of three adjudicators, can be appealed."; and

(b) by the substitution for subregulation (5) of the following subregulation:

"(5) Within 15 days of receiving the appeal notice from the provider the other party may submit an appeal notice response to the provider.".

14. Amendment of regulation 33

Regulation 33 of the Alternative Dispute Resolution Regulations is hereby amended-

(a) by the substitution for subregulation (1) of the following subregulation:

"(1) If legal proceedings are initiated during a dispute in respect of a domain name that is the subject of the dispute, the provider must suspend the dispute immediately unless an adjudicator has already been appointed in which event the adjudicator must continue to decide the dispute."; and

(b) by the insertion after subregulation (1) of the following subregulation:

"(1A) If the adjudicator continues to decide the dispute as contemplated in subregulation (1), the implementation of the decision is subject to the provisions of regulation 11(4).".

15. Amendment of regulation 34

Regulation 34 of the Alternative Dispute Resolution Regulations is hereby amended-

(a) by the substitution for subregulation (1) of the following subregulation:

"(1) A complainant must pay a fixed fee in the sum of R10,000-00 to the provider for one adjudicator as contemplated in regulation 20(3) or a fixed fee in the sum of R24,000-00 for three adjudicators to decide the dispute, if the complainant elects to have the dispute decided by three adjudicators, provided that the fixed fee is reduced by 50% in the case of summary decision as contemplated in regulation 18(3).";

(b) by the substitution for subregulation (5) of the following subregulation:

"(5) Upon receipt of the fees required in terms of 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 and registrants seeking financial assistance, provided that the fees payable to the Authority are reduced to 5% in the case of summary decision as contemplated in regulation 18(3)."; and

(c) by the insertion after subregulation (5) of the following subregulation:

"(6) If the Parties reach a settlement during informal mediation as contemplated in regulation 19A, no fees are payable.".

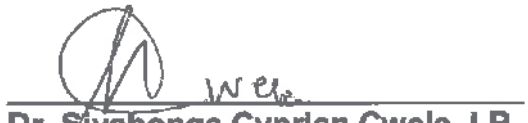
DEPARTEMENT VAN TELEKOMMUNIKASIE EN POSDIENSTE

NO. 1246 **10 NOVEMBER 2017**

WET OP ELEKTRONIESE KOMMUNIKASIES EN TRANSAKSIES, 2002
(WET NO. 25 VAN 2002)

WYSIGING VAN DIE REGULASIES BETREFFENDE ALTERNATIEWE GESKILBESLEGTING

Ek, dr. Siyabonga Cyprian Cwele, Minister van Telekommunikasie en Posdienste, wysig hierby ingevolge artikel 69, gelees met artikel 94, van die Wet op Elektroniese Kommunikasies en Transaksies, 2002 (Wet No. 25 van 2002), die Regulasies betreffende alternatiewe geskilbeslegting gepubliseer as Goewermentskennisgewing No. R. 1166 in die *Staatskoerant* 29405 van 22 November 2006 en gewysig by Goewermentskennisgewing No. 1228 in die *Staatskoerant* 39504 van 11 Desember 2015, soos aangedui in die Bylae.



Dr. Siyabonga Cyprian Cwele, LP
Minister van Telekommunikasie en Posdienste

BYLAE

WYSIGING VAN DIE REGULASIES BETREFFENDE ALTERNATIEWE GESKILBESLEGTING

Wysiging van Indeling van regulasies

1. Die Indeling van regulasies wat regulasie 1 van die Regulasies betreffende alternatiewe geskilbeslegting voorafgaan word hierby gewysig—

(a) deur item 7 deur die volgende item te vervang:

"Geskilprosedure **7**"; en

(b) deur die volgende item na item 19 in te voeg:

"Informele bemiddeling **19A**".

Wysiging van regulasie 1

2. Regulasie 1 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig deur die volgende omskrywing na die omskrywing van "die Wet" in te voeg:

"'**Informele bemiddeling**' onpartydige bemiddeling wat die Owerheid uitvoer om 'n beslegting wat vir beide Partye aanvaarbaar is, te vergemaklik;".

Wysiging van regulasie 4

3. Regulasie 4 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig—

(a) deur subregulasie (3) deur die volgende subregulasie te vervang:

"(3) Daar is 'n weerlegbare vermoede van misbruikende registrasie indien die klaer bewys dat daar in minstens drie geskille in die twee jaar wat die indiening van die geskil voorafgaan, bevind is dat die geregistreerde misbruikende registrasies gedoen het."; en

(b) deur na subregulasie (3) die volgende subregulasie by te voeg:

"(4) Ten einde die vermoede van misbruikende registrasie soos in regulasie 4(3) bedoel suksesvol te weerlê, moet die geregistreerde bewys dat die registrasie van die domeinnaam nie 'n misbruikende registrasie is nie.".

Vervanging van regulasie 5

4. Regulasie 5 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby deur die volgende regulasie vervang:

"**5.** Faktore wat daarop kan dui dat die domeinnaam nie 'n misbruikende registrasie is nie, sluit in—

(a) dat die geregistreerde, voordat hy of sy bewus geword het van die gronde van die klaer se klagte—

(i) die domeinnaam in verband met die aanbied in goeie trou van goedere of dienste gebruik het of aantoonbare voorbereidings daarvoor getref het;

(ii) algemeen onder die naam bekend was of wettig verbind is met 'n merk wat identies of gelyksoortig is aan die domeinnaam; of

(iii) wettige niekommersiële of billike gebruik van die domeinnaam gemaak het;

(b) dat die domeinnaam generies of op deskriptiewe wyse gebruik word en die geregistreerde billike gebruik daarvan maak; en

(c) dat die geregistreerde billike gebruik bewys het, welke gebruik webwerwe kan insluit wat uitsluitlik as huldeblyk vir of vir billike kritiek op 'n persoon of besigheid bedryf word: Met dien verstande dat indien die domeinnaam (uitgesonderd die eerste- en tweedevlaksuffiks) identies is aan die merk waarin die klaer op regte aandring, sonder enige byvoeging, die bewyslas om aan te toon dat die domeinnaam nie 'n misbruikende registrasie nie, na die geregistreerde verskuif.".

Vervanging van regulasie 7

5. Regulasie 7 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby deur die volgende regulasie vervang:

"Geskilprosedure

7. Die prosedure uiteengesit in Hoofstuk III skryf die proses vir die inisiëring en voer van 'n geskil en die afsluiting daarvan voor.".

Vervanging van regulasie 9

6. Regulasie 9 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby deur die volgende regulasie vervang:

"**9.** (1) Die moontlike beslissings voortspruitende uit 'n geskil voor 'n beregter is beperk tot—

(a) in die geval van misbruikende registrasies, die van die hand wys van die geskil of die oordrag van die betwiste domeinnaam aan die klaer;

(b) in die geval van aanstootlike registrasies, die van die hand wys van die geskil of die skrapping van die domeinnaam en 'n verbod op registrasie in die toekoms;

(c) die van die hand wys van die geskil omdat die geskil 'n omgekeerde domeinnaamkaping uitmaak;

(d) die kansellering van die betwiste domeinnaam soos hieronder in subregulasie (3) bedoel.

(2) Indien drie geskille van 'n klaer binne 'n tydperk van twee jaar op grond van omgekeerde domeinnaamkaping van die hand gewys is, sal die verskaffer vir 'n tydperk van twee jaar vanaf die datum van die laaste beslissing nie enige verdere klagte van die klaer aanvaar nie, uitgesonderd by die aanvoer van goeie gronde.

(3) In die geval van misbruikende registrasies kan die beregter die kansellering van die domeinnaam oorweeg indien die klaer en 'n derde party oor die regte of geregistreerde regte beskik en die kansellering van die domeinnaam 'n meer gepaste regsmiddel is as die van die hand wys of die oordrag daarvan.".

Wysiging van regulasie 11

7. Regulasie 11 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig—

(a) deur die volgende subregulasie na subregulasie (1) in te voeg:

"(1A) Enige party wat 'n regsgeding oor enige verwante aangeleentheid in die Hoë Hof van die Republiek van Suid-Afrika instel, moet die tweedevlak-domeinadministrateur skriftelik per faks, geregistreerde pos of koerier daaroor inlig."; en

(b) deur subregulasie (3) deur die volgende subregulasie te vervang:

"(3) 'n Tweedevlak-domeinadministrateur moet die beslissing implementeer soos beoog in regulasie 30, tensy die tweedevlak-domeinadministrateur, soos in subregulasie (1A) bedoel, ingelig is dat een van die partye 'n regsgeding in die Hoë Hof van die Republiek van Suid-Afrika ingestel het rakende die domeinnaam.".

Wysiging van regulasie 16

8. Regulasie 16 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig deur in subregulasie (2) paragraaf (l) deur die volgende paragraaf te vervang:

"(l) afgesluit word met die volgende verklaring en die handtekening van die klaer of sy of haar gemagtigde verteenwoordiger, afgelê as 'n eed of bevestiging voor 'n kommissaris van ede of 'n persoon wat 'n soortgelyke openbare amp beklee waar die klag in 'n vreemde land geteken word:

'Die klaer sertifiseer dat die inligting vervat in hierdie geskil, na sy of haar beste wete sowel volledig as akkuraat is, dat hierdie geskil nie vir 'n onbehoorlike doel, soos om die geregistreerde te treiter, gebruik word nie en dat die bewerings in hierdie geskil geregverdig is kragtens hierdie Regulasies en die toepaslike reg.

Handtekening van klaer

Datum:
Plek:

Ek sertifiseer dat ek, voordat ek die eed/bevestiging afgeneem het, die verklaarder die volgende vrae gevra het en sy/haar antwoorde in sy/haar teenwoordigheid neergeskryf het:

(i) Ken en verstaan u die inhoud van die verklaring?
Antwoord:
(ii) Het u enige beswaar teen die aflegging van die voorgeskrewe eed of bevestiging?
Antwoord:
(iii) Beskou u die voorgeskrewe eed of bevestiging as bindend vir u gewete?
Antwoord:

Ek sertifiseer dat die verklaarder erken dat hy/sy die inhoud van hierdie verklaring ken en verstaan. Die verklaarder spreek die volgende woorde uit: "Ek verklaar onder eed dat die inhoud van hierdie verklaring waar is, so help my God."/"Ek verklaar opreg dat die inhoud van hierdie verklaring waar is". Die handtekening/merk van die verklaarder word in my teenwoordigheid op die verklaring aangebring.

_____

Kommissaris van Ede/Persoon wat soortgelyke openbare amp beklee
Volle naam:
Ampstitel:
Gebied:
Amp *ex officio* beklee:
Sakeadres:
Datum:
Plek:'".

Wysiging van regulasie 18

9. Regulasie 18 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig—

(a) deur in subregulasie (2) paragraaf **(f)** deur die volgende paragraaf te vervang:

"(f) afgesluit word met die volgende verklaring en die handtekening van die geregistreerde of sy of haar gemagtigde verteenwoordiger, afgelê as 'n eed of bevestiging voor 'n kommissaris van ede of 'n persoon wat 'n soortgelyke openbare amp beklee waar die antwoord in 'n vreemde land geteken word:

'Die geregistreerde sertifiseer dat die inligting vervat in hierdie antwoord, na sy of haar beste wete sowel volledig as akkuraat is, dat

hierdie antwoord nie vir 'n onbehoorlike doel, soos om die klaer te treiter, verstrek word nie en dat die bewerings in hierdie antwoord geregverdig is kragtens hierdie Regulasies en die toepaslike reg.

_____

Handtekening van geregistreerde

Datum:
Plek:

Ek sertifiseer dat ek, voordat ek die eed/bevestiging afgeneem het, die verklaarder die volgende vrae gevra het en sy/haar antwoorde in sy/haar teenwoordigheid neergeskryf het:

(i) Ken en verstaan u die inhoud van die verklaring?
Antwoord:
(ii) Het u enige beswaar teen die aflegging van die voorgeskrewe eed of bevestiging?
Antwoord:
(iii) Beskou u die voorgeskrewe eed of bevestiging as bindend vir u gewete?
Antwoord:

Ek sertifiseer dat die verklaarder erken dat hy/sy die inhoud van hierdie verklaring ken en verstaan. Die verklaarder spreek die volgende woorde uit: "Ek verklaar onder eed dat die inhoud van hierdie verklaring waar is, so help my God."/"Ek verklaar opreg dat die inhoud van hierdie verklaring waar is". Die handtekening/merk van die verklaarder word in my teenwoordigheid op die verklaring aangebring.

_____

Kommissaris van Ede/Persoon wat soortgelyke openbare amp beklee

Volle naam:
Ampstitel:
Gebied:
Amp *ex officio* beklee:
Sakeadres:
Datum:
Plek:";

(b) deur subregulasie (3) deur die volgende subregulasie te vervang:

"(3) Indien die geregistreerde nie 'n antwoord indien nie, moet die beregter die aangeleentheid beslis op grond van die geskil bedoel in regulasie 16(1) en ooreenkomstig regulasie 9(1)(a) of (b) 'n summiere beslissing uitreik."; en

(c) deur na subregulasie (3) die volgende subregulasies by te voeg:

"(4) 'n Summiere beslissing word egter slegs gegee deur die beregter indien daar aan die vereistes voldoen word dat—

(a) die geregistreerde van die geskil in kennis gestel is ingevolge regulasie 15(1);

(b) die klaer, tot redelike tevredenheid van die beregter, getoon het dat hy of sy beskik oor die regte in 'n naam of merk wat identies of soortgelyk is aan die domeinnaam en die domeinnaam in die hande van die geregistreerde 'n misbruikende registrasie of aanstootlike registrasie is; en

(c) daar geen ander faktore of omstandighede in die geskil bestaan wat die geregistreerde die domeinnaam onbillik sal ontneem nie.

(5) 'n Summiere beslissing word geag 'n beslissing te wees soos in regulasie 29 bedoel.".

Wysiging van regulasie 19

10. Regulasie 19 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig—

(a) deur subregulasie (1) deur die volgende subregulasie te vervang:

"(1) Binne vyf dae ná ontvangs van die antwoord vanaf die verskaffer kan die klaer 'n repliek op die geregistreerde se antwoord by die verskaffer indien, wat die verskaffer aan die geregistreerde moet deurstuur."; en

(b) deur subregulasie (3) deur die volgende subregulasie te vervang:

"(3) Ná verstryking van die vyf dae, maar hoogstens twee dae daarna, moet die verskaffer die Owerheid inlig dat informele bemiddeling ooreenkomstig regulasie 19A uitgevoer moet word.".

Invoeging van regulasie 19A

11. Die volgende regulasie word hierby, ná regulasie 19, in die Regulasies betreffende alternatiewe geskilbeslegting ingevoeg:

"Informele bemiddeling

19A (1) Binne twee dae nadat die Owerheid ingelig is deur die verskaffer soos beoog in regulasie 19(3), moet die Owerheid informele bemiddeling begin uitvoer. Informele bemiddeling word uitgevoer op 'n wyse wat die Owerheid geheel na sy eie goeddunke gepas ag. Geen informele bemiddeling vind plaas as die geregistreerde nie 'n antwoord indien nie.

(2) Die onderhandelings gevoer tussen die partye tydens informele bemiddeling (ook enige inligting wat uit of in verband met die onderhandelings bekom is) is vertroulik, dit wil sê, dit word nie aan die beregter getoon nie. Nóg die Owerheid nóg 'n party mag besonderhede van sodanige onderhandelings aan enige derde partye openbaar maak, tensy 'n hof van bevoegde jurisdiksie openbaarmaking gelas of die Owerheid of enigeen van die partye ingevolge die toepaslike reg of regulasies daartoe vereis word. Geeneen van die partye mag enige inligting wat tydens die bemiddeling ingewin is, met enige verborge of bybedoelings gebruik of in enige voorlegging insluit wat waarskynlik deur 'n beregter of 'n regter in die geskil of enige latere geskil of regsgeding gesien sal word nie.

(3) Indien die partye tydens informele bemiddeling 'n skikking bereik, is die bestaan, aard en bepalings van die skikking vertroulik, tensy die partye spesifiek anders ooreenkoms of 'n hof van bevoegde jurisdiksie anders gelas.

(4) Geen bindende mondelinge ooreenkomste mag as deel van die informele bemiddeling bereik word nie: enige skikking wat deur die partye bereik word, moet skriftelik of in 'n soortgelyke elektroniese vorm geskied ten einde afdwingbaar te wees.

(5) Indien die partye 'n skikking bereik en ooreenkom dat 'n betwiste domeinnaam aan die klaer oorgedra moet word, moet die Owerheid die beslissing aan die tweedevlak-domeinadministrateur deurgee wat die beslissing soos by regulasie 30(4) beoog, moet implementeer.

(6) Indien die partye nie binne vyf dae by wyse van informele bemiddeling 'n aanvaarbare oplossing bereik nie, moet die Owerheid die verskaffer binne twee dae meedeel dat 'n beregter ingevolge regulasie 20 aangestel moet word, welke aanstelling binne twee dae deur die verskaffer gedoen moet word.

(7) Geeneen van die partye mag die Owerheid (ook sy direkteure, amptenare, werknemers, kontrakteurs of agente) versoek om inligting of materiaal openbaar te maak wat as gevolg van 'n informele bemiddeling kragtens hierdie Regulasies ingewin is nie, tensy sodanige openbaarmaking deur 'n hof van bevoegde jurisdiksie gelas word. Geeneen van die partye mag die Owerheid (ook sy direkteure, amptenare, werknemers, kontrakteurs of agente) as getuie roep in enige verrigtinge wat voortspruit uit, of in verband staan met, die aangeleenthede wat tydens die bemiddeling bespreek is nie.".

Wysiging van regulasie 21

12. Regulasie 21 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig deur die volgende subregulasie na subregulasie (3) by te voeg:

"(4) 'n Party kan die verskaffer inlig oor omstandighede wat die onpartydigheid of onafhanklikheid van die beregter raak of kan raak, waarna die verskaffer moet bepaal of 'n ander beregter aangestel moet word.".

Wysiging van regulasie 32

13. Regulasie 32 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig—

(a) deur subregulasie (1) deur die volgende subregulasie te vervang:

"(1) Enigeen van die partye het die reg om binne vier dae na ontvangs van die beslissing soos beoog in regulasie 30(1) appèl teen die beslissing aan te teken deur 'n verklaring van voorneme om te appelleer in te dien saam met die appèlgelde waarvoor in regulasie 34(3) voorsiening gemaak word, wat binne 15 dae gevolg moet word deur 'n kennisgewing van appèl: Met dien verstande daar slegs teen 'n beslissing deur een beregter appèl aangeteken kan word en nie teen 'n beslissing deur drie beregters nie."; en

(b) deur subregulasie (5) deur die volgende subregulasie te vervang:

"(5) Binne 15 dae ná ontvangs van die kennisgewing van appèl vanaf die verskaffer kan die ander party 'n antwoord op die kennisgewing van appèl by die verskaffer indien.".

Wysiging van regulasie 33

14. Regulasie 33 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig—

(a) deur subregulasie (1) deur die volgende subregulasie te vervang:

"(1) Indien 'n regsgeding gedurende 'n geskil ingestel word ten opsigte van 'n domeinnaam wat die onderwerp van die geskil is, moet die verskaffer die geskil onmiddellik opskort tensy 'n beregter reeds aangestel is, in welke geval die beregter moet voortgaan om die geskil te beslis."; en

(b) deur na subregulasie (1) die volgende subregulasie in te voeg:

"(1A) Indien die beregter voortgaan om die geskil te beslis soos in subregulasie (1) bedoel, is die implementering van die beslissing onderworpe aan die bepalings van regulasie 11(4).".

Wysiging van regulasie 34

15. Regulasie 34 van die Regulasies betreffende alternatiewe geskilbeslegting word hierby gewysig—

(a) deur subregulasie (1) deur die volgende subregulasie te vervang:

"(1) 'n Klaer moet vasgestelde gelde ten bedrae van R10 000 aan die verskaffer betaal vir een beregter om die geskil te beslis soos beoog in regulasie 20(3) of vasgestelde gelde ten bedrae van R24 000 vir drie beregters indien die klaer kies dat die geskil deur drie beregters beslis moet word, met dien verstande dat die vasgestelde gelde met 50% verminder word in die geval van 'n summiere beslissing soos beoog in regulasie 18(3).";

(b) deur subregulasie (5) deur die volgende subregulasie te vervang:

"(5) By ontvangs van die gelde ingevolge hierdie regulasie vereis, moet die verskaffer onmiddellik 10% van die gelde aan die Owerheid oorbetaal, welke gelde die Owerheid uitsluitlik vir die befondsing van ander klaers en geregistreerdes wat finansiële bystand verlang moet aanwend, met dien verstande dat die gelde betaalbaar aan die Owerheid tot 5% verminder word in die geval van 'n summiere beslissing soos beoog in regulasie 18(3)."; en

(c) deur na subregulasie (5) die volgende subregulasie by te voeg:

"(6) Indien die partye 'n skikking bereik tydens informele bemiddeling soos beoog in regulasie 19A, is geen gelde betaalbaar nie.".