



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$30.00

WINDHOEK - 15 November 2017

No. 6469

CONTENTS

Page

GENERAL NOTICE

No. 471	Communications Regulatory Authority of Namibia: Notice of intention to make guidelines on the general interpretation and applicability of enforcement, hearings and penalty provisions in the Communications Act, 2009	1
---------	--	---

General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 471

2017

NOTICE OF INTENTION TO MAKE GUIDELINES ON THE GENERAL INTERPRETATION AND APPLICABILITY OF ENFORCEMENT, HEARINGS AND PENALTY PROVISIONS IN THE COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia herewith publishes this notice of intention to make guidelines on the interpretation and applicability of the provisions of the Communications Act, 2009 (Act No. 8 of 2009) which deal with enforcement, hearings and penalties which contains the following:

1. A draft of the proposed Guidelines as set out in Schedule 1.

The public may make oral submissions to the Authority on the proposed Guidelines at a time, date and place notified by the Authority by subsequent notice in the *Gazette*.

The public may also make written submissions to the Authority no later than 30 days from the date of publication of this notice of intention to make Guidelines, in the manner set out below for making written submissions.

Reply comments to written submissions may be submitted to the Authority -

- (a) no later than 15 days after the time for the making of written submissions has lapsed; or
- (b) if the opportunity for the submission of reply comments is published in a subsequent *Gazette*, after the lapse of 14 days from the date of such publication.

All written submissions must-

- (a) contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different; and
- (b) be clear and concise.

All written submissions must be sent or given in any of the following ways:

1. By hand to the head offices of the Authority, namely Communication House, No. 56 Robert Mugabe Avenue, Windhoek.
2. By post to the head offices of the Authority; namely Private Bag 13309, Windhoek, 9000;
3. By electronic mail to the following address: legal@cran.na;
4. By fax to email to: 0886550852.

The Authority herewith gives notice that it will hold a hearing regarding the proposed Guidelines as follows:

DATE: 5 December 2017
TIME: 11H00 - 13H00
VENUE: NATIONAL

The public is invited to make comments and/or oral submissions at the hearing for Guidelines on Enforcement and Penalty in the Communications Sector.

All written comments and notice of oral submissions to be made during the hearing must be submitted to the Authority on or before the **1 December 2017**.

All written comments and notice of oral submission must be submitted to the Authority either physically or electronically -

1. By hand to the head offices of the Authority, namely Communications House, No. 56 Robert Mugabe Avenue, Windhoek;
2. By post to the head offices of the Authority namely Private Bag 13309, Windhoek;
3. By electronic mail to the following address legal@cran.na;
4. By facsimile to the following facsimile number +264 61 222 790; or
5. By fax to email to: 088642748.

Oral submissions must -

1. Include a statement of the name and contact details of the person making the oral submissions and the name and contact details of the person for whom the oral submission is made, if different;
2. Be clear and concise.

F. KISHI**CHAIRPERSON OF THE BOARD OF DIRECTORS****COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA****SCHEDULE 1****GUIDELINES ON THE GENERAL INTERPRETATION AND APPLICABILITY
OF ENFORCEMENT, HEARINGS AND PENALTY PROVISIONS IN THE
COMMUNICATIONS ACT NO 8 OF 2009****TABLE OF CONTENTS****PRELIMINARY INFORMATION**

1. **BACKGROUND**
2. **INTRODUCTION**
3. **STRATEGIC CONTEXT**

CHAPTER I DEFINITIONS AND INTERPRETATION**CHAPTER II APPLICATION AND STATUS OF GUIDELINES**

4. Object of the Guidelines
5. Scope of the Guidelines
6. Regulatory principles
7. Status of the Guidelines

CHAPTER III NATURE OF THE CONTRAVENTION

8. Identifying the contravention
9. Distinguishing regulatory offenses from general offenses
10. Regulatory offenses
11. General offences
12. Delegation of power to prosecute offenses

CHAPTER IV INVESTIGATIONS AND INSPECTIONS

13. Investigations by the Authority
14. Receiving complaints or request for adjudication
15. Screening of complaints or requests for adjudication
16. Investigation notice
17. Public investigation notice
18. Conducting investigations and inspections
19. Investigation reports
20. Timeframe for conducting and finalising investigations
21. Appointment of Inspectors
22. Appointment of special investigators
23. General Powers of Inspectors
24. Requirements of investigation
25. Collection and handling of evidence
26. Types of evidence to be collected
27. Manner of collection of evidence

28. Entry and search
29. Assistance from police officers
30. Inspection and confiscation of equipment
31. Information requests
32. Summoning of witnesses
33. Analysis of evidence collected during investigations
34. Safe-keeping of evidence collected during investigations
35. Rights of Respondents
36. Accountability of inspectors during investigations
37. Own-initiative investigations and inspections
38. Confidentiality in respect of investigations
39. Handing over the investigation report to the Legal Advice Department for prosecution
40. Closure of a case without any enforcement action

CHAPTER V HEARINGS

41. Summoning of Respondents
42. Admission or denial of alleged offence
43. When to refer a matter to the Prosecutor-General
44. When to conduct a hearing
45. Constitution of a hearing
46. Sequence of hearings
47. Appointment of a chairperson
48. Outline of responsibilities of the Chairperson – (section 115 delegation)
49. Role of the Chairperson
50. Timelines of proceedings and adjudication
51. Rules of evidence
52. Legal representation at hearings
53. Record of proceedings
54. Findings and decisions of the Chairperson
55. Reconsideration of the Authority's decision
56. Publication of closures and findings

CHAPTER VI PROCEDURES

57. Introduction
58. Rights of the accused
59. Presentation of evidence during the hearing
60. Decision of the Chairperson
61. Chairperson's checklist

CHAPTER VII ENFORCEMENT ORDERS

62. Discretion to issue enforcement orders
63. When to issue an enforcement order
64. Factors to be considered when determining appropriate enforcement orders
65. Possible enforcement orders
66. Warning letters
67. Fines
68. Forfeiture of equipment or apparatus
69. Suspension, withdrawal of the licence or amendment of its terms
70. The Authority's directions (orders)
71. Provisional orders
72. Final orders
73. Report to the Police
74. Referral to the Prosecution Authority
75. Institution of civil proceedings
76. Orders concerning issues of competition

77. Appeal against an enforcement order by the Authority

CHAPTER VIII PENALTIES

78. Penalties for contravention of an enforcement order
79. Fines and prison terms
80. Determination of the amount of a penalty
81. Factors to be considered in the imposition of fines
82. Corporate liability

ANNEXES

- ANNEX A: TEMPLATE FOR INVESTIGATION NOTICE**
ANNEX B: TEMPLATE FOR INVESTIGATION REPORT
ANNEX C: TEMPLATE FOR REMOVAL OF EVIDENCE RECEIPT
ANNEX D: TEMPLATE FOR SEARCH WARRANT
ANNEX E: TEMPLATE FOR A SUMMONS
ANNEX F: TEMPLATE FOR A NOTICE OF HEARING
ANNEX G: TEMPLATE FOR A WITNESS SUBPEONA

PRELIMINARY INFORMATION

1. BACKGROUND

These Guidelines seek to curb any unlawful, anti-competitive and monopolistic conduct in the regulation of telecommunications services and networks, broadcasting, postal services and the use and allocation of radio spectrum in Namibia. The Guidelines also offer guidance on how to address breaches of regulatory rules and/or competition law with regards to telecommunications services and networks, broadcasting, postal services and the allocation of radio spectrum.

CRAN has a general duty under the Communications Act No. 8 of 2009, in carrying out these functions, to have due regard to the need to eliminate conduct which is:

- a) unlawful;
- b) anti-competitive; or
- c) otherwise harms consumer interests.

CRAN thus seeks to ensure compliance with the existing regulatory framework, and where necessary, enforce compliance with the rules of such framework. Such an approach eliminates unethical and/or unlawful conduct in the communications sector in Namibia. CRAN will conduct investigations and provide enforcement decisions in cases where there are reasonable and/or legitimate grounds of believing that a legal subject (natural or juristic person) is guilty of violating the provisions of the Communications Act and its Regulations.

CRAN will provide enforcement decisions in cases where one has not been prepared previously. Where an enforcement decision has been previously prepared, no new investigations will be conducted when taking enforcement action.

2. INTRODUCTION

- 2.1. CRAN is an independent regulator and competition authority for the Namibian communications sector.
- 2.2. CRAN has a number of roles and duties relating to identifying and responding to conduct which is unlawful, anti-competitive, monopolistic, or otherwise harms consumer interests.

- 2.3. CRAN's investigations aim at responding effectively to breaches of regulatory rules or relevant law. CRAN is able to act effectively in curbing any observed violations of the Communications Act of 2009 in terms of the powers conferred to it by the same Act.
- 2.4. CRAN therefore handles the following types of investigations:
- a) compliance with regulatory conditions imposed under the Communications Act of 2009, where the complaint or concern is about consumer protection;
 - b) prohibiting unfair trading practices;
 - c) alleged anti-competitive conduct on agreements under competition law;
 - d) compliance with regulatory conditions where the complaint or concern is not about consumer protection; and
 - e) complaints about a feature or combination of features of a market that is, or appears to be, significantly harming the interests of consumers.

What is contained in these Guidelines?

- 2.5. These Guidelines cover CRAN's work in:
- a) resolving regulatory disputes in terms of the Communications Act of 2009;
 - b) monitoring compliance with regulatory conditions especially through the use of enforcement orders; and
 - c) any other issues as may be deemed to fall under the jurisdiction of CRAN as specified in the Act.

3. STRATEGIC CONTEXT

CRAN's strategic intent in formulating these Guidelines is to make the communications sector work in Namibia's public interest. This can be achieved by delivering constructive regulatory outcomes that effectively balance the needs of industry and the community.

CRAN's Guidelines form part of a collection of strategic documents that describe how the statutory body approaches its work. These Guidelines should be considered in the context of international instruments regulating the communications sector, the Namibian Constitution, and the Communications Act of 2009. It is anticipated that these Guidelines will be updated as frequently as may be deemed necessary and that they provide guidance about CRAN's overarching regulatory approach and priorities.

CHAPTER I DEFINITIONS AND INTERPRETATION

In these Guidelines, unless otherwise inconsistent with the context, the following expressions or words bear the meaning assigned to them below:

“Accused” means any person who has been served summons issued by the Authority in terms of section 115 of the Act and in terms of these Guidelines, or issued by the Prosecutor-General, to be charged for contravening an applicable provision of the Act, Regulations issued under the Act or any licence issued by the Authority;

“Act” means the Communications Act, 2009 (Act No. 8 of 2009);

“Respondent” means any person who is alleged to have contravened an applicable provision of the Act, Regulations issued under the Act or any licence issued by the Authority;

“Authority” means the Communications Regulatory Authority of Namibia established by section 4 of the Act;

“**Board Chairperson**” means the Chairperson of the Board appointed under section 13 of the Act;

“**Chairperson**” means a person appointed by the Authority in terms of these Guidelines to preside over hearings relating to a regulatory offence;

“**Complainant**” means any person, who is a customer of a service provider;

“**Complaint**” means a written complaint submitted by a complainant to a service provider or to the Authority in accordance with Section 131 of the Act, as the case may be relating to the quality of service rendered by a service provider.

“**Contravention**” means non-compliance with or the infringement of any of the provisions of the Act, Regulations issued under the Act or any licence issued by the Authority;

“**Day**” means calendar days excluding public holidays;

“**Defaulter**” means any person who has contravened an applicable provision of the Act, Regulations issued under the Act or any licence issued by the Authority;

“**Enforcement action**” means any steps or processes taken by the Authority to ensure compliance with any of the provisions of the Act, Regulations issued under the Act or any licence issued by the Authority;

“**Guidelines**” means the guidelines on enforcement set out in this document;

“**High Court**” means the High Court of Namibia;

“**Inspector**” a member of staff of the Authority appointed in terms of section 123 of the Act to exercise the powers conferred upon inspectors;

“**Investigation**” means the process of investigating an alleged contravention which is undertaken by the Authority in terms of section 122 of the Act;

“**Investigation notice**” means a notice issued by the Authority in terms of these Guidelines;

“**Investigator**” means a person appointed by the Authority to investigate any contravention of the Act as envisaged by the Guidelines;

“**Legal Advice Department**” means the Legal Advice Department of the Authority;

“**Licence**” means any licence duly granted by the Authority in terms of the Act and includes subsisting licences that were granted prior to the commencement of the Act which remain in force at the time of an investigation;

“**Licensee**” means the holder of a licence issued by the Authority;

“**Minister**” means the Minister of Information and Communication Technology;

“**Monitoring**” means the powers of the Authority to monitor compliance or infringement of any of the provisions of the Act, Regulations issued under the Act or any licence issued by the Authority;

“**Month**” means a calendar month;

“**Offence**” means any contravention which constitutes an offence under the Act or the Regulations issued under the Act;

“**Person**” means a legal person, and includes natural and juristic persons;

“**Police**” means the Namibian Police, as established by section 2(1) of the Police Act, 1990 (No. 19 of 1990);

“**Postal service**” means the business of (1) receiving, collecting, dispatching, conveying and delivering postal articles; of (2) transmitting and delivering telegrams; and of (3) performing all incidental services;

“**Prosecutor-General**” means an official appointed by the President on the recommendation of the Judicial Service Commission in terms of Article 88 of the Namibian Constitution to prosecute and defend appeals in criminal proceedings.

“**Regulated sector**” means any sphere of activity within the telecommunications services and networks, broadcasting, postal services and the use and allocation of radio spectrum sectors.;

“**Regulation**” means any regulation made by the Authority in terms of the Act;

“**Request for adjudication**” means a written request by a service provider or, for purposes of paragraph (f), an interception centre requiring the Authority to make a determination -

- (a) of reasonable terms in accordance with section 48(8) of the Act relating to the duties referred to in that section;
- (b) of terms of interconnection in accordance with section 49(7) of the Act, if service providers fail to agree on such terms within a reasonable period;
- (c) of the appropriate prices, terms or conditions in accordance with section 50(10) of the Act, for any agreement in terms of that section where the service providers concerned are unable to negotiate a reasonable price, or terms or conditions for such agreement;
- (d) of a discounted rate for resale in accordance with section 51(3) of the Act, where the service providers concerned are unable to negotiate such discounted rate for resale;
- (e) in accordance with section 69(1) of the Act regarding the exercise of the rights conferred upon a service provider in Part 5 of Chapter V of that Act;
- (f) in accordance with section 74(2) of the Act regarding any dispute that may arise between a service provider and an interception centre, if such a dispute relates to any duty imposed by Part 6 of Chapter V of that Act or a Regulation made in terms of any provision of that Part;

“**Service Provider**” means a carrier, licensee or a telecommunications or broadcasting service provider whose activities fall within the scope of the Authority;

“**Special investigator**” means a person with expert knowledge appointed by the Authority in terms of section 124(1) of the Act as special investigator to investigate any contravention of the Act;

“**Telecommunications services**” means services whose provision consists wholly or partly in the transmission or routing of information on telecommunications networks by means of telecommunications processes but does not include broadcast services.

CHAPTER II APPLICATION AND STATUS OF GUIDELINES

4. Object of the Guidelines

- 4.1 The aim of these Guidelines is to bring clarity and consistency to the Authority's enforcement procedure.
- 4.2 These Guidelines are designed to contribute to fairness, integrity and good public administration.
- 4.3 The Guidelines provide direction on key matters to be considered in the preparation and course of an investigation.
- 4.4 These Guidelines lay out the procedures, rules and standards with regard to:
- a) investigations and inspections,
 - b) the manner of holding hearings, and
 - c) the factors to be considered when imposing penalties for breaches of the provisions of the Communications Act and Regulations.
 - d) Enforcement orders
- 4.5 These Guidelines must be read in conjunction with the Act, any statutory provisions and Regulations applicable to the particular investigation being undertaken.
- 4.6 These Guidelines are published as part of the Authority's commitment to transparency in the regulation of communications.

5. Scope of the Guidelines

- 5.1 The present Guidelines apply to enforcement processes with regard to general offenses and regulatory offenses, as defined in these Guidelines.
- 5.2 The Guidelines do not apply to complaints from individual consumers.
- 5.3 There are two exceptions to the rule that the Guidelines do not apply to complaints from individual consumers. The first exception is where a complaint is filed by individual consumers on a generalized basis. The second exception is where resolution of a complaint by individual consumers requires deploying an investigator.
- 5.4 In the event that it is considered appropriate, in particular where the Authority has received a number of complaints in relation to a similar issue, the Authority may investigate such complaints on a generalised basis. Such complaints will include but are not limited to:
- i. Individual complaints;
 - ii. Class action by affected individuals;
 - iii. Any other complaints as may be deemed appropriate by the Authority based on the prevailing circumstances, and subject to public interest.
- 5.5 Complaints from individual consumers are handled in terms of the Regulations Regarding Procedures for the Adjudication of Disputes, published in Government Gazette from time to time by the Authority.
- 5.6 Where it decides to investigate complaints in terms of section 5, the Authority follows the present Guidelines in conducting investigations and/or inspections.

6. Regulatory principles

- 6.1 The Authority has established a particular set of regulatory principles, providing a distinct statement of its approach to regulating the communications sector.
- 6.2 In exercising its powers in terms of these Guidelines, the Authority will adhere to its regulatory principles which include, but are not limited to:
- a) acting promptly and concisely;
 - b) taking regulatory decisions in an open, transparent, accountable, proportionate and objective manner;
 - c) not showing any undue preference to any person, body or organisation; and
 - d) ensuring that its interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.

7. Status of the Guidelines

- 7.1 The Guidelines are not a substitute for any regulation or law.
- 7.2 The Guidelines do not constitute, and should in no circumstance be interpreted to constitute, legal advice.
- 7.3 The Guidelines, as such, do not have binding legal effect.
- 7.4 Barring the provisions set out in paragraph 7.3. above, the Guidelines are binding only insofar as they reproduce the provisions of the Act and Regulations.
- 7.5 Where it departs from the approach set out in the Guidelines, the Authority must explain or provide reasons for such departure.
- 7.6 The Guidelines will be kept under review and amended as appropriate in light of further experience, developing law and practice, and any change of the Authority's powers and responsibilities.
- 7.7 Any amendment(s):
- a) is preceded by a stakeholder consultative process, and
 - b) come into force prospectively, with effect from a date published by the Authority in the Government Gazette.
- 7.8 These Guidelines come into operation on a date published by the Authority.

CHAPTER III NATURE OF THE CONTRAVENTION

8. Identifying the contravention

- 8.1 In considering a complaint or request for adjudication, the Authority must determine the nature of the contravention.
- 8.2 The Authority must determine whether the contravention is a criminal offense or not.
- 8.3 Determining the nature of a contravention is fundamental as it dictates the rules and procedures to be followed and the persons and institutions to be involved when the Authority addresses a complaint.

- 8.3 If the contravention concerns a criminal offense, the Authority handles the contravention by following the present Guidelines.
- 8.4 If the contravention does not concern a criminal offense, the Authority may institute civil proceedings before a court of civil jurisdiction to settle the contravention or the matter.

9. Distinguishing regulatory offenses from general offenses

- 9.1 When the Authority determines that the contravention concerns a criminal offense, the Authority must further determine whether the contravention concerns a general offense or a regulatory offense, as defined in these Guidelines.
- 9.2 The prosecution of general offenses differs from the prosecution of regulatory offenses.
- 9.3 As a general principle, the Prosecutor-General prosecutes general offenses whereas the Authority on the Prosecutor General's authorisation may prosecute regulatory offenses, as provided for in the Act and these Guidelines.

10. Regulatory offenses

- 10.1 Any person who provides telecommunications or broadcasting services or owns or operates a network for which a licence is required by the Act without a licence to provide such services is guilty of an offense and is liable to a penalty contemplated in section 115(4) and guilty of an offence and on conviction liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding three years.
- 10.2 Any person who provides broadcasting services or telecommunications services or owns or operates a telecommunications network outside the scope of a licence or who does not comply with a condition of the licence held by that person is guilty of an offense, is liable to a penalty contemplated in section 115(4) and guilty of an offence and on conviction liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding two years.
- 10.3 Any person who fails to comply with an enforcement order or any other order or request that this Act authorises the Authority to make, is liable to a penalty contemplated in section 115(4) and is guilty of an offence and liable to a fine not exceeding N\$100 000 or imprisonment for a period not exceeding two years.
- 10.4 An additional penalty or fine of N\$10 000 for each day which an offence referred to in this section continues may be imposed by the Authority or court as the case may be.
- 10.5 Offences under this section may be prosecuted in the manner provided in section 115.

11. General offences

Any person who –

- (a) knowingly causes harmful interference to the radio transmission of a licensed service;
- (b) contravenes the provisions of section 101(1) of the Act (on spectrum licences, certificates, and authorities);
- (c) by means of a telecommunications device knowingly –
- (i) makes, creates, or solicits; or
 - (ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

(d) by means of a telecommunications device knowingly –

- (i) makes, creates, or solicits; or
- (ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;

- (e) makes a telephone call or utilises a telecommunications device, whether or not conversation or communication ensues, without disclosing his or her identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communications;
- (f) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;
- (g) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication;
- (h) knowingly permits any telecommunications facility under his or her control to be used for any activity prohibited by paragraphs (c), (d), (e), (f) or (g) with the intent that it be used for such activity;
- (i) obtains a telecommunications service with the intent of avoiding payment of applicable charges for such service;
- (j) refuses to supply information or documents to the Authority without just excuse or obstructs investigation of an alleged offence by the Authority;
- (k) fails to attend a hearing when a summons has been issued in terms of section 120, requiring his or her attendance at that hearing or fails to answer a question put to him or her at such a hearing without just excuse;
- (l) intentionally modifies, delays or interferes with the contents of any message or information sent by means of a telecommunications service;
- (m) unlawfully engages in interception, tracing or recording of telecommunications operations or messages;
- (n) intentionally damages telecommunications facilities belonging to another person;
- (o) possesses any telecommunications equipment, copper wire, optical fibre or any other equipment or thing that has been used in relation to the provision of telecommunications services, knowing such equipment, wire, fibre or thing to have been stolen or under circumstances in which he or she can reasonably be expected to have known or should have reasonably suspected such equipment, wire, fibre or thing to have been stolen;
- (p) performs any action that has the effect that he or she or any other person gains access to any broadcasting or telecommunications service that is protected by any technological means, is guilty of an offence.

(q) Control or possession of radio apparatus

- 1 Subject to section 101(15) of the Act, no person may have in his or her possession any radio apparatus unless he or she is in possession of a permit issued by the Authority in terms of this section or a spectrum licence issued in terms of section 101 authorising such possession.

12. Delegation of power to prosecute offenses

- (i) In terms of section 115(6) of the Act, if the accused denies the alleged offence or the Authority does not except the admission by the accused of a different offence, the Authority may forward all relevant information to the Prosecutor-General together with a request to him or her to prosecute such offence as is indicated in the request.
- (ii) Notwithstanding the provisions of sections 8, 9 and 11 of these Guidelines, the Prosecutor-General may delegate the power to prosecute offenses to a member of the Board or an employee of the Authority or to any legal practitioner to prosecute such offense subject to such conditions or restrictions as the Prosecutor-General may deem appropriate, in terms of section 115(9) of the Act.

CHAPTER IV INVESTIGATIONS AND INSPECTIONS

13. Investigations by the Authority

The Authority may, at the request of any interested person through the filing of a formal complaint, request for adjudication or on the Authority's own motion, conduct investigations with respect to any activity prohibited by the Act, or for the purposes of doing anything required or permitted to be done under the Act.

14. Receiving complaints or request for adjudication

- 14.1 The Authority receives complaints or requests for adjudication from interested parties in any matter falling within the regulated sector.
- 14.2 A complaint or subject matter of the request for adjudication must be submitted, in writing, to the Authority as the case may be, if the complaint or subject matter has not been resolved or adequately resolved by the respondent within 14 days after receiving such complaint or subject matter of the request for adjudication.
- 14.3 The complaint must be addressed to the Legal Advice Department.
- 14.4 The complaint must set out clearly the following:
- a) the name and contact details of the complainant;
 - b) the name of the Respondent, or if it is unknown, as many identifying details as are available in order to assist the Authority to identify the defaulter;
 - c) the relationship between the complainant and the Respondent, if any;
 - d) the facts and evidence illustrating the nature, extent and duration of the alleged contravention and the circumstances in which the alleged contravention took place and other supporting evidence; and
 - e) any other relevant information as may be requested by the Authority.
- 14.5 The Authority reserves its right not to accept a complaint or request for adjudication which does not meet the requirements for the submission of complaints to the Authority, as set out in these Guidelines and the Regulations.

14.6 The Authority does not apply the requirements for the submission of complaints in a bureaucratic way and considers the circumstances of each case on its own merits.

14.7 Upon receipt of the complaint or request for adjudication, the Authority must determine whether it will conduct investigations and inspections.

15. Screening of complaints or requests for adjudication

15.1 within 14 after receiving a complaint, the Authority screens the complaint it received in terms of section 14 in order to decide whether to investigate an alleged contravention.

15.2 Not every complaint requires investigation. The majority of concerns raised by complainants can be resolved at an informal level or through other processes such as mediation.

15.3 Following the screening of a complaint, the Authority may either –

- i. refuse to investigate an alleged contravention, in which case the Authority informs the complainant in writing of its decision and reasons, closes its file and takes no further action on the matter; or decides to investigate the complaint, in which case the Authority issues an investigation notice to the accused in terms of section 16 of these Guidelines.

15.4 The Authority may refuse to investigate a complaint if:

- a) the complaint falls outside the scope of the Act;
- b) an alternative and satisfactory means of redress is available;
- c) the complaint is trivial, frivolous or vexatious;
- d) the complainant has not provided any evidence to support his or her allegations and there are no reasonable prospects that investigations will yield the necessary evidence;
- e) investigation of the complaint conflicts with particular legislative requirements (i.e., applicable statutes assign the responsibility to conduct investigations or addressing those complaints to other agencies, for example, the Anti-Corruption Commission); or
- f) the complaint or request for adjudication does not have any significance for the Authority or the complainant.

15.5 At this stage, the Authority should be able to decide whether a complaint needs to be investigated internally or should be referred externally.

16. Investigation notice

16.1 After deciding to conduct the investigations into the complaint or request for adjudication, the Authority issues the investigation notice to the Respondent within seven (7) days from the date of concluding the screening process.

16.2. The investigation notice follows the form set out in Annex A of these Guidelines.

16.3. The investigation notice must:

- a) be in writing and set out the nature of the alleged contravention and the relevant information that the Respondent may need to know in order to meet the case being made against it, including the information and materials; and
- b) set out details of the Authority's representative(s) who will be the main point of contact throughout the investigation; and

- c) set out provisional timelines for the key steps of the investigation. The provisional timeline will be set on a case-by-case basis, depending on the type and complexity of the investigation.

16.4 The Authority reserves its right not to issue an investigation notice where it considers that alerting the Respondent might prejudice the investigations.

17. Public investigation notice

17.1 The Authority reserves the right to issue a public notice to inform the public about the launched investigation where such notice would be in the public interest, unless such publication would adversely affect the investigation.

17.2 Prior to issuing the public notice, the Authority invites the Respondent to show cause within a time stipulated by the Authority why such public notice should not be made.

17.3 Where the Authority has made an investigation public, the Respondent is entitled to publish a statement relating to the investigations.

17.4 A statement relating to the investigations must not contain the merits of the investigations.

18. Conducting investigations and inspections

18.1 The Authority may, on the application of any interested person or on its own motion, conduct investigations with respect to any activity prohibited by the Act, or for the purposes of doing anything required or permitted to be done under the Act.

18.2 The investigators and inspectors must conduct the investigations and inspections in a professional manner and in a manner that does not compromise the integrity of the evidence they collect during their investigations.

19. Investigation reports

At the close of their investigations, investigators and inspectors must compile a report following the template set out in Annex B, attached to these Guidelines.

20. Timeframe for conducting and finalising investigations

20.1 Investigations may be routine, non-routine, or urgent.

20.2 For routine investigations, the Authority makes sure that investigators and inspectors complete their investigations within six (6) months after the Authority has resolved to conduct investigations.

20.3 For non-routine investigations, the completion of investigations may take more than six months after the Authority has resolved to conduct investigations.

20.4 For urgent investigations or investigations relating to interference, the Authority must try to complete the investigations as soon as is reasonably possible, depending on the complexity of or circumstances informing the complaint under investigation.

21. Appointment of Inspectors

21.1 Once the Authority has resolved to conduct investigations and inspections, it must appoint investigators and inspectors for that purpose.

- 21.2 The Authority may appoint any of its staff members as inspectors to exercise the powers conferred upon inspectors by sections 123(1), 125 and 126 of the Act.

22. Appointment of special investigators

- 22.1 The Authority may appoint a person who has expert knowledge in a particular field to be a special investigator to investigate any contravention of a provision of the Act or any aspect of the Act, specified –

- a) in the instrument appointing the special investigator; or
- b) in a written notice given to the special investigator by the Chairperson.

- 22.2 A special investigator must perform his or her functions –

- a) subject to the control and direction of the Board Chairperson; and
- b) on the terms and conditions as the Authority and the special investigator may agree.

- 22.3 The Authority may appoint a special investigator as an inspector for a specific purpose.

- 22.4 If a special investigator has been appointed as an inspector, he or she must be issued with an identification card as contemplated in section 123(3) of the Act.

- 22.5 The identification card of a special investigator states the purpose for which the special investigator has been appointed as an inspector.

23. General Powers of Inspectors

- 23.1 Inspectors must have all powers necessary to conduct their investigations effectively, in conformity with the provisions of the Act and these Guidelines.

- 23.2 An inspector has the power to demand on behalf of the Authority any information from any person which that person is required to provide to the Authority by virtue of any provision of the Act.

- 23.3 An inspector may put any question to any person, or may examine any book, document, telecommunication facility, any telecommunications equipment or any other object, in order to obtain any information required by the Authority for the purpose of performing any function under the Act or broadcasting and postal services.

24. Requirements of investigation

In conducting investigations, investigators and inspectors must make sure that the investigations do not contravene the provisions of the Constitution, the relevant criminal laws, the Communications Act or any other applicable law, regulation, or rule.

25. Collection and handling of evidence

- 25.1 The principal function of investigators and inspectors is the collection or recording of evidence for the purposes of hearing in respect of the complaint received by the Authority.

- 25.2 Investigators and inspectors must handle evidence with the utmost caution.

- 25.3 Investigators and inspectors ensure that their handling of the evidence does not compromise the integrity of the evidence or otherwise dilute the probative value of the evidence.

- 25.4 Where any evidence has been taken by the investigators or inspectors exercising their authority in terms of the Act and these Guidelines, whichever is applicable, a receipt must be issued for it to the person from whom such evidence has been taken. The procedure set out in paragraph 25.4.5 of these guidelines and section 126(5) of the Act, regarding removal of anything from the premises being searched, must be adhered to by investigators.
- 25.5 The receipt for the taking of evidence is set out in Annex C of these Guidelines.
- 25.6 In performing any of their duties, the investigators or inspectors exercising their powers in terms of the Act or these Guidelines are vested with the discretion to consult or, where necessary, be accompanied by any person with expert knowledge of any matter they are investigating.
- 25.7 The investigators or inspectors must keep an inventory list of all evidence collected.

26. Types of evidence to be collected

- 26.1 Investigators and inspectors can collect all types of evidence necessary to prove or disprove the main issue to be determined during the hearings.
- 26.2 For evidence collected by investigators and inspectors to be admissible, it must prove an accused person's guilt beyond reasonable doubt in a criminal trial and on a balance of probabilities in a civil matter. Two factors for determining admissibility of evidence are:
- a) Relevance – evidence to be collected must prove or disprove an important fact to the investigation; and
 - b) Reliability – the source of evidence must be credible especially in so far as it concerns witness evidence.
- 26.3 In an investigation, the main sources of evidence are:
- a) oral evidence (recollections),
 - b) documentary evidence (records),
 - c) Demonstrative evidence (sound recordings, maps, drawings, graphs, simulations, models, forensic animation e.t.c)
 - d) real evidence (an object, tape recording, computer printout, or a photograph)
 - e) expert evidence (technical advice), and
 - f) site inspection.
- 26.4 Factors which determine inadmissibility of evidence include but are not limited to the following:
- a) Unfairly prejudicial evidence (evidence that does not add material information to a case under investigation);
 - b) Misleading evidence (evidence that draws judicial officials away from the main issues under investigation);
 - c) Hearsay evidence (a testimony made outside of a court to prove the truth of a matter);
 - d) Character evidence (evidence to prove that the accused person has a certain personality trait and that the accused acted in accordance with such personality trait thereof);
 - e) Expert testimony given by a lay person; and
 - f) Privileges (evidence that is obtained from communication between an accused, Respondent or defaulter and his/her legal representative, amongst other things).

- 26.5 Any electronic evidence collected by the inspectors or investigators shall be deemed reliable if it is part of regularly recorded business records of the accused, Respondent or defaulter. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence, or event of the accused, Respondent or defaulter's operations under investigation by the Authority, shall be admissible. Such electronic evidence must:
- a) Have been made and kept in the regular course of the accused, Respondent or defaulter's business;
 - b) Concern matters within the scope of the business under investigation;
 - c) Have been made at or near the event raising the complaint; and
 - d) Have been known by someone in the employ of the accused, accused defaulter or defaulter's business under investigation.

27. Manner of collection of evidence

- 27.1 Investigators and inspectors may collect evidence in any manner necessary to prove or disprove the main issue to be determined during the hearings.
- 27.2 Investigators and inspectors are not permitted to collect evidence in a manner that violates constitutionally-protected rights, applicable criminal laws, the general rules of evidence, or fundamental principles of administrative justice.
- 27.3 Investigators and inspectors may, by notice in writing in the prescribed form, require from any person such particulars and information as may be reasonably necessary for investigation purposes.
- 27.4 The request for information for purposes of investigation form is set out in Annex A of these Guidelines.

28. Entry and search

- 28.1 If, in the opinion of the Authority, it is necessary for the performance of any function under the Act, the Authority may issue a warrant instructing any provider of telecommunications services to allow an inspector to enter and search any premises used by that person for the conducting of its business: Provided that nothing in this section authorises an inspector to search any premises or part of any premises that is used as the dwelling of any person.
- 28.2 A warrant referred to in this section must be handed to an inspector to execute. The template for a search warrant is set out in Annex D of these Guidelines.
- 28.3 An inspector executing a warrant referred to in this section may enter any premises and there -
- a) make the investigation or inquiry for which he or she has been appointed by the Authority;
 - b) seize anything which in his or her opinion has a bearing on the investigation;
 - c) examine any article or document that is on or in those premises that has a bearing on the investigation;
 - d) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;
 - e) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;

- f) in the presence of a person in charge of, or employed at, the premises, use any computer system on the premises, or require the assistance of any such person to use that computer system, to –
 - (i) search any data contained in or available to that computer system;
 - (ii) reproduce any record from that data; or
 - (iii) seize any output from that computer system for examination and copying;and
 - g) attach and, if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation.
- 28.4 Notwithstanding the provisions of this section, if a person contemplated in this section is not present or not able to give the assistance required by the authorised officer, the inspector may proceed, subject to the express consent of the aforementioned party, to use the computer system if in the circumstances of the case any delay may prejudice the purpose for which the search is carried out.
- 28.5 A person who removes anything from premises being searched must –
- a) issue a receipt for it to the owner of, or person in control of, the premises; and
 - b) return it as soon as practicable after achieving the purpose for which it was removed.
- 28.6 If the owner or person in control of an article or document refuses to allow the inspector conducting a search to inspect that article or document, the inspector may request the Registrar or sheriff of the High Court, or the messenger of the magistrate's court of the area of jurisdiction where the premises are situated, to attach and remove the article or document for safe custody until a competent court determines whether or not the information is privileged. The procedure for obtaining a permit in terms of subsection 11(1), is as prescribed.
- 1 Where any radio apparatus is found in the possession of any person in contravention of the provisions of this section, the Authority may –
- (a) seal or alter such apparatus or any part thereof in order to prevent the use of that radio apparatus for the purpose of transmission or reception, and issue to such person a permit for a limited or indefinite period authorising the possession of that apparatus on condition that it is not during such period used for such purpose;
 - (b) seize such apparatus, whether or not it is sealed as contemplated in paragraph (a), for disposal in terms of subsection (4).
- 2 Radio apparatus seized under subsection (3) (b) must be held by the Authority until –
- (a) its possession is authorised in terms of subsection (1) or (3) (a); or
 - (b) it is declared forfeited as contemplated in section 110 or under any other law.

29. Assistance from police officers

- 29.1 An inspector who is investigating any offence under the Act and these Guidelines may request a police officer to accompany him or her while he or she is conducting such investigation.
- 29.2 A police officer requested to accompany an inspector as contemplated in this section must accompany such inspector and may exercise any power vested in him or her by any law in the presence of that inspector: Provided that the police officer concerned may not search a person in the presence of the inspector concerned if that person is not the same gender as the inspector concerned.

30. Inspection and confiscation of equipment

- 30.1 Investigators and inspectors must have the power to inspect and confiscate equipment needed for the purposes of the investigations and the hearing to be conducted.
- 30.2 In certain cases, the inspection of equipment will be sufficient for the purposes of investigations.
- 30.3 In other cases, the confiscation of the equipment will be necessary.

31. Information requests

- 31.1 In order to conduct investigations effectively, the Authority may request information that it deems relevant to an alleged contravention and necessary for the purposes of the Authority's investigations.
- 31.2 The requested information should be accurate information and must be made available to the Authority within the period specified by the Authority when making the request for information.
- 31.3 The Authority may only agree to an extension of the deadline where the Respondent adequately demonstrates the need for such extension.
- 31.4 Meetings with Respondents may be held as part of information gathering.
- 31.5 Since the Authority takes seriously the failure to comply with lawful notices to produce documents or information, the Authority expects persons requested by the Authority to provide such documents and information to respond within the set timelines to the information request served upon them.

32. Summoning of witnesses

When in the opinion of the Authority, it is likely that any person can give evidence concerning any matter that is relevant to any matter considered at any hearing held by the Authority in terms of the Act, the Authority may issue a summons in the prescribed form instructing that person to attend a hearing of the Authority on a date, time and place indicated in that summons. The template for a summons is set out in Annex E of these Guidelines.

33. Analysis of evidence collected during investigations

- 33.1 Investigators and inspectors must analyse the evidence they have collected during the investigations.
- 33.2 The analysis of investigators and inspectors must assess the reasonable prospects of succeeding in a prosecution against the Respondents on the basis of the probative force of the evidence so collected.

34. Safe-keeping of evidence collected during investigations

- 34.1 Investigators and inspectors must make sure that the evidence collected during the investigations is safely kept.
- 34.2 Investigators and inspectors should not allow third parties or unauthorized persons to tamper with the evidence they have collected for investigation purposes.

35. Rights of Respondents

- 35.1 Persons investigated in terms of the Communications Act and other applicable laws, rules and standards, have certain rights.
- 35.2 The rights of Respondents include those recognized and protected by the Constitution of Namibia, the rules of criminal procedure, the fundamental principles of administrative justice, and the general rules of evidence.

36. Accountability of inspectors during investigations

- 36.1 Special investigators and inspectors are accountable to the Authority for the manner in which they conduct their investigations.
- 36.2 Special investigators and inspectors must file the investigation report, compiled in terms of section 19 of these Guidelines, with the Authority, to which they directly report.

37. Own-initiative investigations and inspections

- 37.1 The Authority may initiate investigations and inspections on its own initiative.
- 37.2 If the Authority is of the view that there reasonable suspicion for an offence, it may investigate, and thereafter conduct a hearing and impose an appropriate sanction, it may initiate investigations and inspections on its own initiative.

38. Confidentiality in respect of investigations

- 38.1 Investigators and inspectors must ensure strict confidentiality in respect of investigations.
- 38.2 Any information provided to the Authority in the course of its investigations must be treated as confidential.
- 38.3 If an investigator or inspector fails to observe such standard of confidentiality, the Authority may suspend him or her, or remove him or her from the case under investigations. The relevant provisions of section 28 of the Act shall also be applicable in this regard.

39. Handing over the investigation report to the Legal Advice Department for prosecution

- 39.1 After investigators and inspectors have finished compiling the investigation report, they must submit it to the Legal Advice Department for prosecution.
- 39.2 If it determines that the evidence may reasonably result in the successful conviction of the Respondent for a crime outside its jurisdiction, the Legal Advice Department must refer the matter to the Prosecutor-General for prosecution.

40. Closure of a case without any enforcement action

- 40.1 The Authority may close a case without any enforcement action if it determines that such action would be futile.
- 40.2 The Authority may close a case without any enforcement action if the person involved is found to be not guilty of contravening the provisions of the Act or the Regulations of the Authority.

CHAPTER V HEARINGS**41. Summoning of Respondents**

41.1 If the Authority is of the opinion that any person has committed a regulatory offence, the Authority may issue a summons in the prescribed form (See Annex E of these Guidelines), which must –

- (a) state the offence that the person has allegedly committed;
- (b) contain allegations of fact which if proved will establish the offence concerned; and
- (c) indicate the penalty that the Authority intends to impose for the offence concerned.

42. Admission or denial of alleged offence

42.1 Within thirty (30) days from the date of the service of a summons, the accused must deliver a notice to the Authority in the prescribed form indicating whether he or she admits or denies the commission of the offence alleged in the notice or whether he or she admits any other regulatory offence.

42.2 The decision of the accused to admit or deny the alleged regulatory offence is crucial as it determines whether the Authority will conduct a hearing or refer the matter to the Prosecutor-General for prosecution.

43. When to refer a matter to the Prosecutor-General

43.1 If the accused denies the alleged regulatory offence or the Authority does not accept the admission by the accused of a different offence, the Authority may forward all relevant information to the Prosecutor-General together with a request to him or her to prosecute such offence as is indicated in the request.

43.2 The Prosecutor-General may request further information from the Authority in order to determine whether an offence has been committed.

43.3 If the Prosecutor-General is satisfied that there is a reasonable possibility of proving the alleged regulatory offence, he or she must prosecute the offence concerned.

44. When to conduct a hearing

The Authority must hold a hearing if –

- (a) the accused admits the offence alleged in the notice to the Authority, or admits a different offence and the Authority accepts that admission; or
- (b) the Prosecutor-General delegates the power to prosecute any offence in terms of the Act to a member of the Board or an employee of the Authority to prosecute such offence subject to such conditions or restrictions as the Prosecutor-General may deem appropriate.

45. Constitution of a hearing

45.1 The Authority must hold a hearing –

- (a) within three (3) months from the date of the admission by the accused in order to determine the appropriate sanction or penalty;
- (b) within a reasonable time from the date of the delegation by the Prosecutor-General of the power to prosecute any offence in terms of the Act;

- (c) In terms of section 115(3) of the Act to impose a fine that does not exceed the fine which the Act determines to be the maximum fine for the offence concerned;
- (d) In terms of section 115(9) of the Act to prosecute any offence in terms of the Act; or
- (e) On request by the licensee for adjudication of disputes.

45.2 A panel consisting of a chairperson and at least two other adjudicators sit as judges in a hearing.

46. Sequence of hearings

46.1 A hearing, depending on the circumstances of each case, proceeds along the following steps:

- 1) actual hearing;
- 2) decision on whether the accused is guilty (in cases referred by the Prosecutor-General with delegation to the Authority of the power to prosecute alleged offence(s));
- 3) consideration of mitigating and aggravating circumstances; and
- 4) enforcement order, including penalty.

47. Appointment of a chairperson

47.1 When constituting a hearing, the Authority must appoint a chairperson.

47.2 The Chairperson referred to in this section specifies the procedure to be followed during the hearing, which may include those referred to under section 48 above.

47.3 In circumstances where the Chairperson referred to in this section is appointed from outside the Authority, such person must:

- a) Be a suitably qualified person without a criminal record;
- b) Have a working knowledge of the telecommunications services sector;
- c) Have no prior knowledge of the case being heard;
- d) Be unbiased and impartial;
- e) Remain neutral at all times and not represent either party to the hearing;
- f) Have a good knowledge of correct procedure for hearings;
- g) Have a working knowledge of hearings of a similar nature as the hearing in question;
- h) Be able to justify and give reasons upon which his/her verdict is based;
- i) Be experienced in weighing up evidence, and experienced in separating facts from opinions;
- j) Be able to justify and give reasons upon which the decided sanction is based; and
- k) Be in a position to present any findings, decisions or sanctions arrived at in the hearing to the Authority for validation.

48. Outline of responsibilities of the Chairperson – (section 115 delegation)

48.1 The Chairperson greets and introduces all the parties present.

48.2 The Chairperson informs the parties that the hearing will take place in the official language, but that provision may be made for an interpreter, if and when necessary.

48.3 After consultation with the Head of the Legal Advice Department, the Chairperson may authorize an audio recording of the proceedings.

48.4 The Chairperson introduces the parties and their roles

48.4 If the accused is not represented, the Chairperson must determine whether the accused understands his or her right to representation and whether he waives it or not.

- 48.5 The chairperson asks the parties to indicate if they are ready to proceed and if any of them wish to raise any points in limine.
- 48.5 If the rights of an accused are prejudiced, or emotions run high, the Chairperson may adjourn to correct or calm the parties.
- 48.6 If the accused is represented or otherwise assisted, the Chairperson requests the accused to indicate whether he or she is satisfied with his representative.
- 48.7 The summons must be presented and read.
- 48.8 The Chairperson requests the accused to indicate his or her plea and what is disputed.
- 48.9 If the accused pleads guilty and admits the facts and offence, the Chairperson can find the accused guilty on the basis of the accused's plea.
- 48.10 If the accused pleads 'not guilty', the Chairperson will refer to the Authority who may forward all relevant information to the Prosecutor-General together with a request to him or her to prosecute such offence as is indicated in the request.
- 48.11 The Chairperson requests the prosecutor to make opening statements.
- 48.12 The Chairperson allows the prosecutor to present evidence and/or witnesses.
- 48.13 The Chairperson allows the accused to put questions to the witness(es) and to test evidence.
- 48.14 The Chairperson allows the accused to present evidence and witnesses.
- 48.15 The Chairperson allows the prosecutor to put questions to and/or test the witness(es) or evidence presented by the accused or his or her representative.
- 48.16. The steps from paragraph 50.12 to paragraph 50.15 are followed or repeated with every witness.
- 48.17 The Chairperson allows both sides to argue and/or present statements with regard to whether the offense was committed by the accused.
- 48.18 The Chairperson adjourns and applies his or her mind to the issue.
- 48.19 The Chairperson reconvenes later to make the decision.
- 48.20 If the accused is found guilty, the Chairperson allows the accused to present mitigating circumstances after announcing the decision, and the prosecutor to present aggravating circumstances.
- 48.21 The Chairperson may request more detail.
- 48.22 The Chairperson adjourns to consider the factors and re-convene at a later stage to communicate to the accused that an appropriate penalty will be imposed.
- 49. Role of the Chairperson**
- 49.1 The Chairperson is in control of the proceedings.

- 49.2 If any party is not satisfied with the process or objects to any of its aspects, such a party may request that the objection be considered and noted, upon which it is the duty of the Chairperson to take a decision on the matter and continue with the process.
- 49.3 The Chairperson, in consultation with the members of the Head of the Legal Advice Department, decides, after consideration of the evidence, whether the accused is guilty or not on a particular or related charge.
- 49.4 If the accused is found guilty after consideration of mitigating and aggravating circumstances, the Chairperson decides what the appropriate penalty will be.
- 49.5 The determination of the accused's guilt and the weighing of mitigating and aggravating circumstances must be two separate considerations.
- 49.6 The Chairperson must inform the accused of his or her right to appeal.
- 49.7 The Chairperson issues ruling on procedural questions during the hearing, such as, but not limited to, adequacy of time to prepare for the hearing, representation, and postponements.
- 49.8 The Authority reserves the right to appoint an external person to chair a hearing.
- 49.9 The Authority ensures that the Chairperson is objective and that hearings are conducted without undue delay.
- 49.10 The Chairperson must not be closely related to the incident.

50. Timelines of proceedings and adjudication

- 50.1 In routine cases, proceedings and adjudication should not exceed three (3) months. In exceptional cases, proceedings may last longer than three (3) months.
- 50.2 In any event, proceedings should not exceed twelve (12) months.
- 50.3 The Authority may, by way of notice in writing in the prescribed form (The template for notice of hearing is set out in Annex F of these Guidelines), delivered by an authorised agent to any person, require such person to
- (1) appear before it at the date, time and place specified in such notice;
 - (2) make a statement; and/or
 - (3) submit to it all the documents or objects in the possession or custody or under the control of any such person which may be reasonably necessary.
- 50.4 At the hearing, through the Chairperson and after explaining applicable rights under the Namibian Constitution and relevant legislation, the Authority may -
- (1) question any person required to appear before it in connection with any matter which may be reasonably necessary; or
 - (2) retain for a reasonable period, for the purposes of this Act or the underlying statutes, any document or object submitted to it.

51. Rules of evidence

- 51.1 The rules of evidence that apply to hearings are less formal than court procedures.

- 51.2 Rules of evidence applied in terms of these Guidelines must comply with the fundamental principles of administrative justice and constitutionally-protected rights and the law of evidence.
- 51.3 At the hearing, the following four types of evidence are inadmissible:
1. Hearsay evidence;
 2. Opinion evidence;
 3. The verdict in other proceedings; and
 4. Character evidence.
- 51.4 Evidence that is sufficient to convince a presiding officer is called proof. Such evidence is admissible at the hearing. Examples of such evidence include but are not limited to:
- 1 Witness evidence - (This includes, people who saw or heard what happened; people who can explain procedures and processes such as disciplinary policies/rules and security procedures; and experts who can testify to technical matters such as the illness of the employee, the type of weapon that may have been used or the electronic system through which money may have been stolen.
 - 2 Documentary evidence - (This includes, Invoices; Letters; Emails; Policy documents; Security registers; Time sheets, box labels; and Any other documents relevant to the case).
 - 3 Objects –(This includes things like radio equipment; computers; videotape; and any other objects relevant to the case).
- 51.5 Chairpersons to a hearing are obliged to deal with the ‘substantial merits of the dispute’ [ascertain the full factual picture] quickly, fairly, in a manner he/she deem fits and with the minimum of legal formalities. However, they are not bound by strict rules of evidence. Generally, Chairpersons should admit all material that is relevant [i.e. has probative value], unless the specific type of evidence requires a stricter approach based on fairness and public policy.

Evidence is relevant [has probative value] if it:

- a) is material to the issues and to facts in dispute;
 - b) appears reliable (credible);
 - c) will assist in deciding the case: it has the ability to shine light on what actually happened when there is a dispute of fact;
 - d) does not involve lengthy investigations into collateral issues that begs the very issue that the arbitrator has to decide;
 - e) does not prejudice a fair and speedy resolution of the dispute; and
 - f) relates to the credibility of a witness: whether he has a reason to lie, his powers of perception and memory, the consistency, inherent probabilities and accuracy of his version.
- 51.6 Evidence at a hearing must be admissible subject to its:
1. Admissibility – (Refers to whether particular evidence may be introduced at the hearing and/or be taken into account by the Chairperson).
 2. Weight – (The fact that evidence is admitted does not mean that it is automatically true or even particularly persuasive. It is still open to the Chairperson to find, when assessing all the evidence presented, that certain evidence which he/she admitted is improbable and is to be rejected or that certain evidence, while constituting proof, does not carry much weight.

51.7 Specific types of evidence include but are not limited to the following:

1. **Documentary Evidence** -Where the contents of a document are in dispute, it should be introduced into evidence through a witness who was the author, signatory, producer or had some other connection to the document sufficient to confirm the correctness of the contents; otherwise it hearsay evidence.
2. **Photos, videos and surveillance camera evidence** - if the content is in dispute, to be admissible, it must be introduced and authenticated by the person who can testify that they are true representations of the objects and persons which they purport to represent and that it was not altered.
3. **Physical evidence** e.g. computers, radio equipment e.t.c
4. **Evidence created by a device with no human intervention** [e.g. a computer printout from a telecommunications service provider of the cellphone calls of an accused/Respondent/defaulter].
5. **Real evidence** - Practically, it should be introduced and explained by a witness.
6. **Opinion Evidence** - A lay witness (a non-expert witness) may be permitted to express an opinion based on general human experience and knowledge.
7. **Evidence obtained from such interception and monitoring of communication systems** - Evidence obtained from such interception and monitoring of communication systems is admissible if amongst others issues:
 - i. the accused/Respondent/defaulter was advised beforehand in a law, policy or other notice that the Authority may intercept and monitor such communications when appropriate.
 - ii. the interception or monitoring was authorised by the head of the Authority.
 - iii. the Authority had good reason to intercept or monitor the communications: there were reasonable grounds to suspect an offence or improper use of the telecommunications system. less drastic methods of detection were not available at the time.

52. Legal representation at hearings

Persons investigated and who must appear at the hearings held by the Authority have the right to bring legal practitioner(s) to appear and make representations on their behalf.

53. Record of proceedings

- 53.1 Proceedings of hearings must be recorded subject to the provisions of section 27 of the Act.
- 53.2 Recordings of proceedings may be kept in any form that is easily retrievable.

54. Findings and decisions of the Chairperson

- 54.1 The Chairperson must make a finding within 180 (business) days from the date of conclusion of the hearing and publish a decision in the Government Gazette.
- 54.2 The findings themselves must be made available to the public.
- 54.3 After the expiry of the period allowed for the representations, the Chairperson considers all the information, evidence and representations submitted to the Authority and makes his or her decision.
- 54.4 The decision of the Chairperson is made in the name and with the express authority of the Authority.
- 54.5 The decision of the Chairperson is final and binding.

- 54.6 The decision of the Chairperson must be in writing.
- 54.7 The decision of the Chairperson must be in communicated to both the prosecutor and the accused.
- 54.8 The Chairperson must pronounce his or her decision, made in terms of this section, within two (2) months after the expiry of the period allowed for the representations.
- 54.9 The set target of two (2) months may be extended by the Authority if it reasonably views that the Chairperson needs a longer period to make his or her decision.

55. Reconsideration of the Authority's decision

1. An aggrieved party to any proceedings may appeal to the Authority to reconsider any order or decision that it has made, within 90 days from the date of making that decision or issuing that order.
2. If an aggrieved person is not satisfied with the decision made by the authority upon reconsideration, such person may in terms of these Guidelines appeal to the High Court of Namibia within six (6) months of delivery of the decision, or within any extended period as the Authority may determine.

56. Publication of closures and findings

- 56.1 When an investigation has been made public on opening, the Authority may also publish its closures, findings of contravention, or enforcement actions.
- 56.2 If the case is closed with no finding of a contravention, the Authority may make this finding public.
- 56.3 The Authority reserves the right to make public any of its decisions, even though the investigations may not have been made public on opening.

CHAPTER VI PROCEDURES

57. Introduction

- 57.1 This part of the Guidelines aims to give effect to setting fair and acceptable standards of conduct by providing procedural Guidelines to the Authority in the proper administration of discipline within the regulated sector.
- 57.2 This part of the Guidelines is further necessary to promote fairness, equity, reasonableness and consistency in the treatment of accused persons.
- 57.3 Contraventions of the Act and the Regulations made thereunder jeopardize the future and effective operations of the Authority and the regulated sector.
- 57.4 If an accused person is found guilty of contravening the Act and/or the Regulations, fair and just enforcement action must be meted out to such person in order to rectify his or her behaviour.
- 57.5 The intention of this part of the Guidelines is to correct and rehabilitate behaviour.
- 57.6 The decision-making process with regard to enforcement matters is always subject to applicable laws, such as the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

58. Rights of the accused

An accused person has the following rights, which must be adhered to during a hearing:

- a. the accused has the right to be assisted or represented;
- b. the accused has the right to be present during the hearing;
- c. the accused has the right to state his or her case and oppose allegations against him or her;
- d. the accused has the right to call witnesses (See Annex G of these Guidelines for a Template of a witness subpoena). It is the duty of the accused to arrange in time for his or her witnesses to be present at the hearing;
- e. the accused has the right to put questions to the witnesses in order to test their version of the relevant facts, to clarify an issue or to receive more particulars; and
- f. the accused has the right to have an interpreter present to assist in understanding the allegations and statements in his or her own language. The official language will be English. If requested or necessary, it is the duty of the Authority to arrange for an interpreter to be present.
- g. The accused has the right to disclosure, to be exercised/realised no less than fourteen (14) days before a hearing.

59. Presentation of evidence during the hearing

The presentation of evidence during the hearing must follow the rules of procedure set out in these Guidelines.

60. Decision of the Chairperson

- 60.1 A written decision by the Chairperson follows the steps set out in this section.
- 60.2 The Chairperson states the alleged offense, as contained in the summons and as elaborated upon by evidence.
- 60.3 The Chairperson summarises the relevant facts of the matter.
- 60.4 The Chairperson provides a short summary of what each witness said.
- 60.5 The Chairperson evaluates the truth and correctness of all evidence.
- 60.6 If the evidence is found to be untrue, the Chairperson provides and records the reasons for such finding.
- 60.7 If appropriate, the Chairperson makes remarks on procedural fairness during the hearing, especially on whether the rights of the accused were respected.
- 60.8 The Chairperson states his or her decision on whether the accused is guilty or not.
- 60.9 The Chairperson states that the accused was allowed an opportunity to represent mitigating circumstances.
- 60.10 The Chairperson states the enforcement order issued.
- 60.11 The Chairperson states the reasons for the enforcement order.
- 60.12 The Chairperson lists all the mitigating and aggravating circumstances that were considered.

60.13 The Chairperson informs the accused of his or her right to appeal to the High Court against the decision made and/or the enforcement order imposed by the Chairperson.

61. Chairperson's checklist

61.1 The Chairperson follows each item on the list in this section and ticks it as done or as not applicable (N/A).

61.2 When an item is ticked as not applicable (N/A), the Chairperson provides reasons for ticking the item as such.

61.3 Any observations with regard to the procedure must be inserted on the list.

61.4 The Chairperson opens the hearing by greeting all the parties and introducing himself or herself as well as his or her co-adjudicators.

61.5 The Chairperson determines whether an interpreter is needed and, if so, what arrangements have been made.

61.6 The Chairperson informs the parties that an audio tape recording will be made.

61.7 The Chairperson explains that the role of the Chairperson is to determine the correct facts and if the alleged offense was committed; and, if the accused committed the alleged offense, the role of the Chairperson is to issue an appropriate enforcement order.

61.8 The Chairperson requests each person to identify himself or herself by name and to identify his or her role (prosecutor, accused, accused's representative, witness, inspector, etc.)

61.9 If the accused has no legal representative, the Chairperson explains to the accused that he or she has a right to use a legal representative to assist him or her in understanding the charge and the procedures, and to represent him or her in general during the proceedings.

61.10 The Chairperson asks the accused whether she understands her right to be assisted by a legal representative.

61.11 The Chairperson asks the accused whether he or she would like to continue without a legal representative and whether he or she waives his or her right to legal representation.

61.12 If the accused does not waive his or her right to legal representation, the Chairperson determines when the accused will obtain such representation and when he or she will be able to continue with the proceedings.

61.13 The Chairperson determines whether any witnesses will be called and if they are present.

61.14 The Chairperson explains the procedure which will be followed during the hearing, when each person or witness will speak, and when an opportunity will be given for questions.

61.15 The Chairperson asks the accused if she has any objection against any person present at the hearing.

61.16 If the accused raises an objection against any person present at the hearing, the Chairperson determines whether the objection has merits and takes a decision on the objection raised by the accused.

61.17 The Chairperson asks if the parties are ready to proceed with the hearing.

- 61.18 The Chairperson determines when the summons was handed to the accused and whether it indicated the date and place of the hearing.
- 61.19 The Chairperson asks the accused if he or she understands the offense he or she is accused of and which incident or facts led to the hearing.
- 61.20 The Chairperson asks the accused whether he or she pleads guilty or not guilty.
- 61.21 The Chairperson asks the prosecutor put the charge to the accused person.
- 61.22 The Chairperson asks the accused to plead to the charges put to him/her by the prosecutor.
- 61.23 The Chairperson requests the prosecutor to lead evidence.
- 61.24 Any witness called to provide evidence describes the incident or relevant facts.
- 61.25 The Chairperson allows the accused or his or her representative an opportunity to put questions to the witness called by the prosecutor and to indicate which facts he or she does not agree with.
- 61.26 The Chairperson may put questions to the witness to clarify issues.
- 61.27 After the prosecutor presents all his or her evidence, the accused is allowed an opportunity to make a statement and/or to present his or her evidence in defence.
- 61.28 As with the witness(es) called by the prosecutor, the Chairperson and the prosecutor may put questions to the witness(es) called by the accused or his or her representative.
- 61.29 The Chairperson requests the prosecutor to present arguments, i.e. on what charge must the accused be found guilty and why.
- 61.30 The Chairperson requests the accused or his or her representative to present arguments, i.e. why the accused must be found not guilty.
- 61.31 The Chairperson asks the prosecutor if he or she would like to add anything on the point of law in response to accused submissions.
- 61.32 If the accused is not satisfied with some aspects of the procedure, the Chairperson takes correct steps, if available, or takes the accused's concerns into account when making a decision and issuing an enforcement order.
- 61.33 The Chairperson adjourns to decide whether the accused is guilty or not.
- 61.34 The Chairperson informs all parties of the time and date when the Chairperson will announce his decision.
- 61.35 The Chairperson warns every person to be present at the hearing to be present when the Chairperson's decision will be announced.
- 61.36 The Chairperson considers the evidence behind closed doors with his or her co-adjudicators. The Chairperson and his or her co-adjudicators determine the correct facts, the charge and the reasons in support of the decision.
- 61.37 The Chairperson reconvenes the hearing and informs the accused of whether he or she is found guilty and, if so, on which charge(s).

- 61.38 If the accused is found guilty, the Chairperson requests the accused or his or her representative to present mitigating circumstances.
- 61.39 The Chairperson requests the prosecutor to present aggravating circumstances, including previous warnings and the degree of compliance by the accused.
- 61.40 The Chairperson determines which enforcement order to impose in terms of the Act, the Regulations and the present Guidelines.
- 61.41 The Chairperson adjourns, for at least 60 days and decides which enforcement order to issue and states the reasons (mitigating and aggravating) in support of the order.
- 61.42 The Chairperson informs the accused of the decision.
- 61.43 The Chairperson explains that the decision is made in the name and with the authority of the Authority and that the decision is final and binding.
- 61.44 The Chairperson informs the accused his or her right to appeal to the Authority within ninety (90) working days from the date that he or she receives the written decision of the Chairperson.
- 61.45 The Chairperson informs the accused that he or she may request in writing a copy of the transcript of the proceedings, which will be provided at a cost.

CHAPTER VII ENFORCEMENT ORDERS

62. Discretion to issue enforcement orders

Subject to the provisions of the Act, Regulations issued thereunder or any licence issued by the Authority, the Authority may exercise its discretion to issue an enforcement order it deems appropriate in the circumstances.

63. When to issue an enforcement order

If the Authority is of the opinion that any person has contravened or failed to comply with any provision of the Act for which a specific penalty has not been prescribed, or any provision for which the making of such an order is explicitly authorised, it may issue an enforcement order instructing the person concerned to perform any action or refrain from any action stated in that order within the period specified in that order.

64. Factors to be considered when determining appropriate enforcement orders

64.1 In its enforcement functions, the Authority considers the most appropriate enforcement order having regard to various factors. It is for this reason that the Authority does not and has not specified each enforcement order applicable to each possible contravention.

64.2 In determining the appropriate enforcement action to invoke for each particular contravention, the Authority may generally be guided by, but not limited to, the following factors and considerations:

- (1) any written and/or oral representations made to it by the notified provider;
- (2) the gravity and extent of the contravention;
- (3) the degree of harm, injury, discomfort caused or occasioned by such contravention to consumers or other stakeholders in the communications sector;

- (4) the duration of the contravention and whether or not the person who committed the contravention took immediate steps to remedy the contravention soon after having knowledge of the contravention;
- (5) the level of accountability and culpability of the defaulter;
- (6) whether the contravention was committed knowingly;
- (7) the record of previous contravention by the defaulter;
- (8) the absence or ineffectiveness of internal mechanisms or procedures required to prevent contravention by the person who committed the contravention;
- (9) any gain made by the person who committed the contravention directly or indirectly arising from such contravention;
- (10) the need to impose a particular enforcement order so as to act as deterrent both to the person who committed such contravention and other persons; and
- (11) such other factors as the Authority may, from time to time, determine.

65. Possible enforcement orders

With regard to the enforcement of the Act, Regulations issued thereunder or any licence issued by the Authority, a range of possible options are available to the Authority. After a hearing, the Authority may:

- (1) issue warning letters;
- (2) impose civil penalties or fines;
- (3) declare any telecommunications equipment or radio apparatus forfeited;
- (4) suspend or withdraw a licence issued under the Act, or amend the terms of such licence;
- (5) issue directions (orders) aimed at preventing or rectifying a contravention;
- (6) report any matter to the Police;
- (7) refer to the Prosecutor-General any matter in which the Authority is of the view that criminal offence has been committed under the Act;
- (8) institute civil proceedings before a court of competent jurisdiction; or
- (9) issue an order in terms of the Authority's powers under Chapter V of the Act and/or under the Regulations on Handling Competition for Telecommunications Licensees.

66. Warning letters

66.1 Where, upon conclusion of investigations, there are findings that a licensee is contravening or has contravened any provision of the Act, Regulations issued thereunder or any licence issued by the Authority in terms of the Act, the Authority may issue a warning letter to the defaulter requiring the defaulter to take such steps to comply with the condition as may be specified or to take steps to remedy the consequences of the contravention within a particular time frame stipulated in the warning letter.

66.2 A warning letter is an order that the Authority may issue in response to a contravention where a warning is considered a sufficient response.

67. Fines

67.1 The Authority may impose a fine for enforcement purposes.

67.2 The Authority may not impose a fine which exceeds the maximum penalty stipulated in the Act.

67.3 Any or fine imposed by the Authority pursuant to these Guidelines must become due and payable by the defaulter person within ninety (90) days from the date of the decision made by the Authority or within any other period prescribed by the Authority.

68. Forfeiture of equipment or apparatus

- 68.1 After a hearing, the Authority may declare any telecommunications equipment or radio apparatus forfeited –
- (i) that has been used by the accused in the commission of a regulatory offence;
 - (ii) whose possession is prohibited by the Act or otherwise unlawful; or
 - (iii) that does not comply with standards prescribed under section 80 of the Act (on equipment approvals and standards) or that belongs to a category of telecommunications equipment for which type approval has been prescribed as contemplated in section 80(3) and that has not been approved as contemplated in that subsection; session is prohibited by this Act or otherwise unlawful.
- 68.2 If a person is convicted by the Authority in terms of section 115(4)(b) of the Act and section of these Guidelines, the Authority may declare any telecommunications equipment or radio apparatus used in the commission of an offence or whose possession is prohibited by the Act or whose possession is otherwise unlawful, to be forfeited to the Authority.
- 68.3 The Authority may deal with any apparatus or equipment forfeited to it in terms of section 115(4)(b) as it thinks fit: Provided that the provisions in the laws relating to criminal procedure in Namibia dealing with the enforcement of rights by persons to property other than persons from whom the property has been seized, apply with the necessary changes to property contemplated in this section.

69. Suspension, withdrawal of the licence or amendment of its terms

- 69.1 When deciding whether to suspend or withdraw a licence issued under the Act or amend the terms of such licence, the Authority adheres to the present Guidelines and to provisions of sections 38(10)(i)(telecommunications licence), 90(2)(e)-(f)(broadcasting licence) and 96(6)(b)(iii)-(iv)(postal service licence) of the Act.
- 69.2 In exercising the powers to withdraw, suspend a licence or vary terms thereof, the Authority issues a notice inviting the Respondent to show cause why its licence should not be suspended, varied or withdrawn.
- 69.3 The Authority must publish a notice of such suspension, variation or withdrawal in two consecutive issues of the Government Gazette and newspapers circulating in Namibia.

70. The Authority's directions (orders)

- 70.1 The Authority may issue provisional and final orders.
- 70.2 The Authority may issue directions (orders) where the Authority deems it appropriate to prevent or rectify a contravention.

71. Provisional orders

- 71.1 A provisional order may be issued before the Authority concludes its investigation where the Authority has reasonable grounds to believe that there is a contravention.
- 71.2 The provisional order may be issued to require a licensee to do or not to do something to prevent loss or irreparable damage or harm that might arise or that which is considered by the Authority likely to arise before the investigations are concluded.
- 71.3 The Authority may issue a provisional order if the balance of convenience favours the granting of a provisional order.

- 71.4 Before issuing a provisional order, the Authority may at its own discretion afford the Respondent a reasonable opportunity to consider the allegations against it and to respond either by written and/or oral representations to the allegations made, unless the Authority has reasonable grounds to believe that doing so would defeat the purpose of the provisional order.
- 71.5 A person who is subject to a provisional order may file an objection to the provisional order within ten (10) days after service of such provisional order has been effected upon it.
- 71.6 In the case of an objection against a provisional order referred to in section, the Authority considers the objection within a reasonable time depending on the urgency of the matter and either:
- (1) revoke the provisional order if it upholds the objection; or
 - (2) extend or uphold the provisional order.

72. Final orders

- 72.1 If the Authority is satisfied after concluding its investigations that a licensee has contravened an applicable provision of the Act, Regulations issued thereunder or any licence issued by the Authority Act, it may impose a final order or confirm a provisional order issued in accordance with sections.
- 72.2 The Authority reserves its right to enforce a final order by civil proceedings before a court of competent jurisdiction.

73. Report to the Police

If, during or at the end of an investigation, the Authority discovers that a criminal offence was committed or has reason to believe that a criminal offence is about to or being committed, the Authority must report same to the Police.

74. Referral to the Prosecution Authority

- 74.1 The Authority may, at its discretion, elect to notify the wrongdoer prior to reporting the matter to the Police.
- 74.2 The fact that a matter has been reported to the Police does not necessarily have the effect of halting the investigations and ultimate findings by the Authority with regard to that matter.

75. Institution of civil proceedings

The Authority may, in the exercise of its enforcement powers, institute civil proceedings in court against any person for any remedy including injunctive relief, recovery of civil penalty or fines or specific performance.

76. Orders concerning issues of competition

The Authority handles issues of competition which may arise in the course of the discharge of its functions in accordance with the provisions of Chapter IV of the Act and the applicable Regulations on handling competition for licensees.

77. Appeal against an enforcement order by the Authority

- 77.1 Any person against whom an order is made under section may appeal against such order to the High Court within the prescribed period and subject to such procedural requirements as may be prescribed.
- 77.2 The Authority may allow a person against whom an enforcement order has been made to postpone compliance with the order pending an appeal.
- 77.3 A person who appeals against an order made under section must comply with the order pending the decision of the High Court on the appeal, unless the High Court has made an order exempting him or her from complying with that order, which order may only be granted if the compliance with the order would cause serious prejudice to the party against whom the order has been made and the failure to comply with the order would not cause serious prejudice to another party having a substantial interest in the subject matter of the order.

CHAPTER VIII PENALTIES**78. Penalties for contravention of an enforcement order**

- 78.1 Any person who fails to comply with an enforcement order or any other order or request that the Act authorises the Authority to make, is liable to a penalty contemplated in section 115(4) and is guilty of an offence and liable to a fine not exceeding N\$100 000 or imprisonment for a period not exceeding two years.
- 78.2 An additional penalty or fine of N\$10 000 for each day which an offence referred to in section continues may be imposed by the Authority or a competent court, as the case may be.

79. Fines and prison terms

- 79.1 Any person who provides telecommunications or broadcasting services or owns or operates a network for which a licence is required by the Act without a licence to provide such services (i.e., regulatory offence in terms of section 114(1) of the Act) is liable to a penalty contemplated in section 115(4) and guilty of an offence and on conviction liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding three years.
- 79.2 Any person who provides broadcasting services or telecommunications services or owns or operates a telecommunications network outside the scope of a licence or who does not comply with a condition of the licence held by that person (i.e., regulatory offence in terms of section 114(2) of the Act) is liable to a penalty contemplated in section 115(4) and guilty of an offence and on conviction liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding two years.
- 79.3 A person who –
- (a) contravenes section (d), (m), (n) or (o) of subsection 117(1) of the Act is on conviction liable to imprisonment for a period not exceeding 15 years or a fine not exceeding N\$1 000 000 or both such fine and such imprisonment;
 - (b) contravenes any other provision of subsection 117(1) of the Act is on conviction liable to imprisonment for a period not exceeding five years or to a fine not exceeding N\$20 000 or to both such fine and such imprisonment.

80. Determination of the amount of a penalty

In cases where the amount of a penalty has not been provided for in the Act or Regulations, the Authority must determine the amount of such penalty.

81. Factors to be considered in the imposition of fines

Factors to be considered in the imposition of a penalty or a fine include but are not limited to the following –

- i. the seriousness of the offense;
- ii. public interest;
- iii. whether the offender was an accessory (helping the main offender) or the main offender,
- iv. Contrition;
- v. whether the offender is a “first-time” or repeat offender, and
- vi. impact on the regulated sector;
- vii. Peculiar circumstances of the offender.

82. Corporate liability

Where a licensee commits an offence under the Act, every person who at the time of the commission of such offence was a director, manager or officer of the defaulter may be charged jointly in the same proceedings and where the licensee is convicted of the offence, every such director, manager or officer of the licensee shall be deemed to be guilty of that offence unless he or she proves that the offence was committed without his or her knowledge or that he exercised all due diligence to prevent the commission of the offence. The Namibia Companies Act, 2004 (Act No. 28 of 2004) provides basis for this approach.

ANNEX A

TEMPLATE FOR INVESTIGATION NOTICE

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

INVESTIGATION NOTICE

(In terms of section 17 of the Enforcement and Penalty Guidelines)

TO: _____

Whereas it appears on complaint made to the Authority and the Authority has decided it is necessary to conduct an investigation. The aim of the investigation is to establish the facts of the complaint by gathering as much relevant facts and information as possible

The allegations are: _____

Kindly note that the Authority’s investigators by the name of _____ may also invite you to attend an investigation meeting in order to give you an opportunity to give your side of the story. If this is required, you will be informed of the time and date of the meeting in advance and you may bring a representative with you to this meeting.

It is currently expected that the investigation will be completed by this date _____ of the month _____ in the year _____.

Once the investigation has been completed, you will be informed in writing of the outcome. If the Authority finds that there is a case to answer, you will be issued with Regulatory summon and thereafter issued with a Notice of hearing inviting you to attend a formal hearing to be conducted by the Authority in terms of the Communications Act 8 of 2009.

In the meantime, should you have any information that might be of assistance to the investigation or wish to discuss anything, please do not hesitate to contact the Authority’s investigator _____ at email address: _____ or at telephone number, 061 222666.

Issued at _____ this _____ day of _____ 20 _____.

SIGNATURE

DESIGNATION

ANNEX B**TEMPLATE FOR INVESTIGATION REPORT****COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA****INVESTIGATION REPORT**

This is a template investigation report that an investigator may adapt to suit the particular circumstances of his or her investigation.

The template investigation report is for guidance purposes only and may be changed to reflect the individual circumstances or the needs of a case.

Introduction	Investigation authorised by: [Name and role]
	Investigator: [Name and role]
	Date investigation began:
	Terms of reference: [include if they were amended and how]
	Background to the investigation: [Brief overview of the matter]

Process of investigation	The investigation process: [Explain how the investigation was authorised]
	Evidence collected: [List all evidence collected]
	Evidence not collected: [List all evidence that could not be collected and why]
	Persons interviewed: [List all people interviewed]
	Persons not interviewed: [List any witnesses that could not be interviewed and why]
	Anonymised statements: [If any, explain why and provide details of any enquiries into witness]

The investigation findings	Summary of written and physical evidence: [name and summarise each document contained, set out how the evidence supported or did not support your findings and why]
	Summary of witness evidence: [name and summarise each witness statement, quote from statement where relevant, set out how the witness statement supported or did not support your findings and why]
	Facts established: [detail what the investigation has established]
	Facts that could not be established: [detail any part of the investigation that was inconclusive]
	Mitigating factors: [detail if there were any mitigating factors uncovered that are relevant to the investigation]
	Other relevant information: [detail any other information that is relevant to the matter]

Conclusion [if required]	Recommendation:
	Formal action/Informal action/No action required
	Further details on recommendation: [such as the type of action suggested for example, formal disciplinary meeting, and if there are any other recommendations related to the matter. In disciplinary matters, the investigator should not recommend a possible sanction. This should only be considered at a disciplinary hearing]
	Investigator's signature:
	Date:
Supporting documents	[List all documents collected as part of investigation and included in report]

ISSUED BY THE COMMUNICATION REGULATORY AUTHORITY OF NAMIBIA

ANNEX C

TEMPLATE FOR REMOVAL OF EVIDENCE RECEIPT

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

RECEIPT FOR REMOVAL OF EVIDENCE FROM A PERSON OR PREMISES

(In terms of section 102 and 126, Communications Act, 2009 (Act No. 8 of 2009))

REMOVED BY INSPECTOR:

DATE OF REMOVAL:

PREMISES REMOVED FROM:

FULL NAMES AND SURNAME AND ID NUMBER OF OWNER OF EQUIPMENT OR PERSON IN CHARGE OF PREMISES UPON REMOVAL OF EQUIPMENT:

REASON FOR REMOVAL:

DETAILED DESCRIPTION OF EQUIPMENT REMOVED:

SIGNATURE OF OWNER / PERSON AT PREMISES

DATE

SIGNATURE OF CRAN INSPECTOR

ANNEX D

TEMPLATE FOR SEARCH WARRANT

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

SEARCH WARRANT

(In terms of section 102 and 126, Communications Act, 2009 (Act No. 8 of 2009))

TO INSPECTOR: _____

Whereas it appears on complaint made to the Authority that there are reasonable grounds for suspecting that there is at the premises situated at:

- a) something in respect of which an offence has been committed;
- b) something in respect of which an offence is suspected on reasonable grounds to have been committed;
- c) something in respect of which there are reasonable grounds for believing that it will afford evidence as to the commission of an offence;
- d) something in respect of which there are reasonable grounds for believing that it was used for the purpose of or in connection with the commission of an offence;
- e) something in respect of which there are reasonable grounds for believing that it is intended to be used for purpose of committing an offence,

to wit:

THIS IS THEREFORE, to direct the investigators/special investigators to search during daytime the said premises and to seize the said:

if found, and to take it before the Communications Regulatory Authority of Namibia (“CRAN”) to be dealt with according to the Communications Act 8 of 2009.

Issued at _____ this _____ day of _____ 20____.

SIGNATURE

DESIGNATION

ANNEX E**TEMPLATE FOR A SUMMONS****COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA****SUMMONS****IN TERMS OF SECTION 115(1) OF THE COMMUNICATIONS ACT, 2009
(ACT NO. 8 OF 2009)**

To:	
Date:	
Physical Address:	
Postal Address:	
Telephone:	
Facsimile:	

You are herewith notified in terms of section 115(1) of the Communications Act, 2009 (Act No. 8 of 2009) that on or about the _____, you are alleged to have committed a regulatory offence in terms of section 114 of the Act, in that you:

The Authority may, after a hearing to determine the appropriate sanction or penalty, impose any or all of the following penalties, in terms of section 115(4) of the Act, if you admit the offence alleged in this summons or admit a different offence and the Authority accepts that admission:

- a) Impose a fine of _____

If you deny the offence alleged or the Authority does not accept your admission of a different offence, the Authority may forward a request to prosecute the matter to the Prosecutor-General.

In terms of section 115(2) and (6) of the Act, you must deliver a notice to the Authority, within thirty (30) days from the date of acknowledging receipt of this summons, indicating whether you admit any other offence referred to in section 114 of the Act, in the form prescribed by the Authority, entitled "NOTICE IN TERMS OF SECTION 115(2) AND (6) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) – RESPONSE TO SUMMONS" which is attached hereto.

Issued on this ____ day of the, _____ at _____

CHAIRPERSON OF THE BOARD OF DIRECTORS

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

ACKNOWLEDGEMENT OF RECEIPT BY ACCUSED:

Full Name:	
Date:	
Place:	
Signature:	

FOR OFFICE USE ONLY:

DELIVERED BY:	
Full Name:	
Date:	
Place:	
Signature:	

**ANNEX F
TEMPLATE FOR A NOTICE OF HEARING**

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

Reference No/ Case No:

In the matter between:

Plaintiff

And

Defendant

NOTICE OF HEARING

To: _____

At address: _____

PLEASE TAKE NOTE THAT You HEREBY are required to attend a hearing on (date) _____

at (time) _____ at the (place) _____;

1. The allegations against you are:

1.1 _____

2. You have the right:

- 2.1 to be present at the enquiry.
- 2.2 to be given time to prepare your case.
- 2.3 to be given advance warning of the charges.
- 2.4 to be advised of the allegations and charges.
- 2.5 to be represented or assisted at the hearing by legal representative of your choice
- 2.6 to ask questions of any evidence produced or of statements by the witnesses.
- 2.7 to call witnesses to testify on your behalf
- 2.8 To use an interpreter. In the event that an interpreter is required please indicate so in order for the Authority to secure the services of an interpreter.
- 2.9 to appeal within five working days against any penalty which may be imposed and conveyed to you.

3. It is your responsibility to arrange for your witnesses and representation and to ensure that they attend the enquiry. An interpreter will be arranged for you if you so require, provided the Authority is advised of your need for an interpreter on the date of receipt of this notice.

4. Should you fail to attend the enquiry without valid reason, or you obstruct the progress of the proceedings the chairman has the discretion to precede in your absence, to make a finding, and impose a penalty, including that of summary dismissal.

Dated at Windhoek, on the _____ of _____ 2017

SIGNATURE

DESIGNATION

ANNEX G**TEMPLATE FOR A WITNESS SUBPEONA****COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA****Reference No/ Case No:****In the matter between:**

Plaintiff**And**

Defendant**WITNESS SUBPOENA**

To the Sheriff or his deputy:-

Notify: _____

At address: _____

That he is herewith ordered to personally appear before the Authority at the Authority's premises situated at 56 Robert Mugabe Avenue, Windhoek, on the date _____ at 10:00 and to stay present until he is excused by the Chairperson in order to testify on at the hearing regarding matters of which he/she has knowledge regarding a Complaint submitted to the Authority by the Complainant against the Respondent.

And further notify the abovementioned person that he may under no circumstances omit to comply with this subpoena as he can otherwise expose himself to a regulatory offence in terms of section 114(3) and be liable to a fine not exceeding N\$ 100 000 or imprisonment for a period not exceeding two years

Dated at Windhoek on this the _____ day of _____ 2017.**ISSUED BY:** _____**DESIGNATION** _____

RETURN OF SERVICE**ACKNOWLEDGEMENT OF RECEIPT:**

Full Name:	
Date:	
Place:	
Signature:	

FOR OFFICE USE ONLY:

DELIVERED BY:	
Full Name:	
Date:	
Place:	
Signature:	
