



L E S O T H O  
C O M M U N I C A T I O N S  
A U T H O R I T Y

# DRAFT POSTAL AND COURIER SERVICES RULE, 2022

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## LEGAL NOTICE NO. OF 2022

### **Lesotho Communications Authority (Postal and Courier Services) Rules, 2022**

Pursuant to section 5(l) (c) of the Communications Act, 2012

#### **LESOTHO COMMUNICATIONS AUTHORITY**

Makes the following rules -

#### **PART 1 - PRELIMINARY**

##### **1. Citation and commencement**

These rules may be cited as Lesotho Communications Authority (Postal and Courier Services) Rules, 2022 and shall come into operation on the date of publication in the Gazette.

##### **2. Application and Scope**

These Rules shall apply to postal and courier services licensees.

##### **3. Interpretation**

In these Rules, words have meaning assigned to them in the Act and unless the context otherwise requires -

"Act" means the Communications Act, 2012;

"Applicant" means a person who has submitted an application to the Authority requesting any authorisation;

"Postal" means a service of carrying letters, documents and parcels from one place to another. In these Rules "Postal" shall have the same meaning as "Courier";

"postal item" means any form of written communication or other document, article or object that is directed to a specific person or specific address and is to be conveyed other than by electronic means; and includes a packet, package or wrapper containing any such communication, document, article or object;

"postal services" means -

- (a) the service of conveying postal items from one place to another by post,

- (b) the incidental services of receiving, collecting, sorting and delivering postal items, and
- (c) any other service which relates to, and is provided in conjunction with, any service within paragraph (a) or (b).

“Licensee” means a holder of a postal or courier licence issued by the Authority;

“postcard” means a card for sending a message by mail without an envelope, typically having a photograph or other illustrations on one side;

“private bag” means a bag in respect to which an arrangement has been made with a public postal service provider for receipt of large volumes of mail;

“registered item” means a postal item registered by a Licensee before being sent and at each point along its route to safeguard against loss, theft or damage;

“Returned Office” means an office designated for the return of undelivered postal items.

“undelivered postal item” means a postal item which for any reason has not been claimed by addressee;

“UPU” means the Universal Postal Union, a specialized agency of the United Nations concerned with postal services;

“Extra-Territorial Office of Exchange (ETOE)” means an office of exchange operated by or in connection with a postal licensee outside its national territory.

## **PART II – LICENSING**

### **4. Requirement for licence.**

- (1) A person shall not engage in the provision of postal services except under the authority of a valid licence granted by the Authority in accordance with the Act.

### **5. Categories of licences**

- (1) The Authority shall issue postal and courier services licences in the following categories:
  - (a) Public postal services licence which shall be held exclusively by the Lesotho Post; and

(b) Commercial postal services licence which be held by operators that provide courier or express services;

(2) Notwithstanding sub-section (1) above, the Authority reserves the right to sub-classify the licence categories or determine any other new category from time to time.

## **6. Application for postal and courier service licence**

- (1) An application for a postal and courier service licence shall be made in writing to the Authority using the prescribed form.
- (2) The Authority shall prescribe application requirements for postal and courier services licences which shall be made available to any person who intends to provide postal or courier services.
- (3) The Authority shall prescribe the terms and conditions of each licence in accordance with the Act and these Rules.
- (4) The duration of licences shall be as prescribed in the Lesotho Communications Authority (Licensing Classifications and Fees) Rules or any subsequent subsidiary legislation that may be adopted from time to time.

## **7. Extra-Territorial Offices of Exchange (ETOE).**

(1) A foreign postal licensee shall not establish an Extra-Territorial Office of Exchange in Lesotho or use the Universal Postal Union system, without the consent of the Authority.

## **8. Licence fees**

A Licensee shall pay to the Authority licence fees as prescribed by the Authority.

## **9. Licence application procedure**

- (1) A person who wishes to apply for a postal or courier services licence shall apply using the prescribed application form obtainable from the Authority or Authority's website.
- (2) Applicant must be a juristic person registered in Lesotho.

(3) The application shall be accompanied with at least the following requirements:

- a) company extract and certified copy of certificate of incorporation;
- b) certified copy of the Items of Incorporation;
- c) certified national identity card or passport copies of all the directors of the company;
- d) contact details of the person responsible for the application;
- e) a liability and compensation policy for loss or damage of postal items;
- f) certified copy of sublease agreement;
- g) proof of payment for application fee
- h) Sufficient documentary evidence to prove that the applicant has the financial capability to meet the capital investment required in the financial plan (including a recent bank statement for the juristic person or its members or audited financial statements for existing entities; and
- i) a detailed business plan which includes:
  - i. Financial plan – cost of initial capital investment, three-year financial projections with relevant cash flow projection, operating costs, tariff plan etc.
  - ii. Technical plan – details of the scope of services proposed, practical skills, previous experience and methods proposed to be used as well as schedule of delivery standards.
  - iii. Market plan – competition issues, target market, geographical coverage and roll out plan.
  - iv. Human Resource plan – proposed management structure, staff training plan and Curricula Vitae of key employees.
  - v. Any other relevant information.

(4) Notwithstanding the requirements listed under rule 9 (3) above, the Authority may request an additional information from the applicant.

(5) The Authority may from time to time issue or revise the application requirements.

(6) The Authority may receive applications for postal and courier licences on a first come first served basis without waiting for any public invitation or tendering process.

## **10. Failure to submit relevant information**

(1) The Authority shall not consider the application where an applicant fails to:

- (a) submit documents or information as required in rule 9(3); or

- (b) appear on a date scheduled by the Authority to make representation regarding its application;
- (2) Failure to consider an application pursuant to sub-rule (1), shall not prevent the applicant from resubmitting another application with the required information.
- (3) Resubmission of application under sub – rule (2) shall be treated as a new application.
- (4) The Authority may at any time after the filing of an application for a licence or an application for modification or renewal of a licence or during the term of any licence, requires from an applicant or licensee to provide further written statements of fact to enable it determine whether the application for a licence or application for modification or renewal should be granted or denied.
- (5) An applicant for a licence shall be bound by all terms, commitments, offers, presentations, proposals, plans and obligations stated in the application and shall ensure the accuracy of the information and representations submitted in the application.

## **11. Granting of Licence**

- (1) The Authority shall evaluate any application submitted pursuant to rule 9 within ninety (90) days from the date of receipt of an application and shall notify the applicant in writing of the results of the evaluation and where necessary publish the results.
- (2) The Authority may grant or refuse to grant the licence to operate a postal and courier service after considering an application in accordance with the Act.
- (3) The Authority shall issue a licence under these Rules subject to payment of applicable regulatory fees.

## **12. Terms and conditions of licence**

- (1) A licence issued by the Authority may include the following:
  - (a) scope of a licence;
  - (b) duration of a licence;
  - (c) terms and conditions under which the licence is granted;
  - (d) the postal or courier services to be provided under the licence;



- (e) where applicable, universal service obligations to be undertaken by the licensee;
  - (f) roll out targets; and
  - (g) any other condition deemed necessary by the Authority.
- (2) A licence shall not be used by a licensee for a purpose other than that for which it was issued.

### **13. Amendment of a licence**

- (1) The Authority may modify or amend any term or condition of a postal or courier licence if it is in the public interest to do so or if it is necessary taking into account developments in the industry or for any other reason deemed necessary by the Authority.
- (2) A licensee may apply for amendment of any term or condition of its licence.
- (3) Before amending a licence, the Authority shall take into account the following:
- (a) the justified interests of a licensee;
  - (b) the principles of fair competition and equality of treatment when amending a licence; and
  - (c) the objectives of the Act.
- (4) Any application made pursuant to sub-rule 2, shall include:
- (a) a formal letter with clear reasons justifying application for the amendment;
  - (b) application fee for amendment prescribed by the Authority; and
  - (c) any additional information or documents as may be requested by the Authority.
- (5) The application by a licensee to modify the terms or conditions of a licence shall be published in:
- (a) the website of the Authority; and
  - (b) newspapers.
- (6) The Authority shall amend any provision, in response to a request made in sub-rule 2, subject to payment of applicable amendment fees as prescribed by the Authority.
- (7) Before amending any provision of any licence issued under these Rules, the Authority shall:
- (a) make a public consultation for a period not exceeding 30 days stating the proposed amendments, and shall give Licensee or any person

- with an interest an opportunity to make representations concerning the proposed amendment; and
- (b) give due consideration to any representations made by the licensee.
- (8) The Authority shall give an interested party thirty (30) days to submit written comments on the proposed amendment to the Authority.
- (9) The Authority shall give due consideration to the submissions of the licensee and the comments of interested parties prior to making a decision on the proposed amendment.
- (10) The Licensee may submit a response to the proposed amendment within thirty (30) days of the notice.
- (11) Where the Licensee does not respond within the thirty (30) day period under sub-rule 7, the Authority shall proceed to effect the amendment of the licence.
- (12) Where the Licensee submits a response, the Authority shall consider such response and notify the Licensee within ninety (90) days on its decision to either:
- (a) reject the proposed amendment;
- (b) modify the proposed amendment; or
- (c) proceed with the proposed amendment.
- (13) The Authority may before giving any notice of amendment of licence, investigate:
- (a) whether any matter relating to the provision of postal and courier services, operates against the public interest or is likely to do so; or
- (b) whether the amendment may remedy or prevent any adverse effects to the public relating to the provision of postal and courier services.
- (14) The Authority shall, as soon as practicable after commencing an investigation under sub-rule 10, give notice by:
- (a) serving a copy of the notice initiating the investigation on a licensee; and
- (b) publishing particulars of the investigation in a manner that may be appropriate for the purpose of bringing it to the attention of a person likely to be affected by it.
- (15) The Authority shall prepare a report on the investigation under sub-rule 10 of this rule which shall:

- (a) include conclusions on the matter investigated and reasons behind the conclusions;
  - (b) specify the negative effects against the public, where it concludes that a matter investigated is against or is likely to be against public interest; and
  - (c) specify amendment to be made to the licence where it concludes that any negative effects specified may be addressed by such amendments.
- (16) The Authority may amend a licence issued under these Rules if it concludes based on the report that:
- (a) the matter investigated is or is likely to be against the public interest;
  - (b) the negative effects against the public may be addressed, remedied or prevented by amendment of the licence;
- (17) The Authority shall adhere to the procedure set out in these Rules before making an amendment to a licence following an investigation.
- (18) The Authority may grant a licensee a period of time to comply with the amendment of its licence where such amendment causes undue hardship to the licensee.

#### **14. Transfer of licence.**

- (1) A licensee shall not transfer, cede, lend, pledge, alienate or encumber a licence, in any way, manner or form, without the prior written consent of the Authority.
- (2) An application by a licensee for the transfer of a licence shall be made in writing to the Authority.
- (3) An application for the transfer of a licence shall be accompanied by an application for a licence by the person to whom the licensee intends to transfer the licence.
- (4) The Authority shall, prior to approval of application for the transfer of a licence, satisfy itself that the applicant meets the same terms and conditions for the grant of a new licence and has demonstrated financial and technical capacity to provide postal or courier services.
- (5) The Authority may, in the exercise of its discretion, refuse the application for the transfer of a licence.
- (6) The fees for the transfer shall be as prescribed by the Authority.

## **15. Renewal of Licence**

- (1) The Authority shall, before renewing a licence issued under these Rules, take into consideration:
  - (a) the objectives of the Act;
  - (b) the satisfactory performance by the licensee of its obligations under its ending licence;
  - (c) whether the licensee continues to be financially and technically capable of meeting its obligations under the licence; and
  - (d) whether the licensee has not, during the term of its licence, contravened the provisions of the Act, terms and conditions of the licence, rules and directives issued by the Authority or any other relevant laws and regulations.
- (2) Unless otherwise provided in the licence, a licensee shall apply for renewal of its licence at least twelve months before the expiry date of its licence.
- (3) The Authority shall renew a license issued under these Rules subject to payment of applicable renewal fees as stipulated by the Authority from time to time.
- (4) The Authority may renew a licence with minimal change to the licence conditions or replace it with a new or updated licence conditions that meet the need of the prevailing regulatory environment.

## **16. Suspension or Revocation of a Licence**

- (1) The Authority may suspend or revoke a licence on the following grounds:
  - (a) failure by the licensee to offer services within the roll out period specified in the licence;
  - (b) failure by the licensee to meet any quality of service targets prescribed by the Authority in the licence;
  - (c) where a licensee is declared bankrupt or insolvent or is liquidated under any laws in force in Lesotho.
  - (d) failure by a licensee to obtain insurance cover for indemnity purposes as prescribed by the Authority in the licence;
  - (e) failure by a licensee to pay regulatory fees or any contributions prescribed by the Authority; and
  - (f) serious or continuous breach of the licence conditions.

- (2) The Authority shall give the licensee thirty (30) days written notice with reasons of the intended suspension or revocation during which the licensee has an opportunity to make representations to the Authority.
- (3) After due consideration of any representations submitted in terms of sub-rule 2, the Authority may:
  - (a) suspend the licence for a specified period during which the licensee is required to remedy the breach that caused the suspension; or
  - (b) revoke the licence.

### **PART III - GENERAL CONDITIONS**

#### **17. Transmission of postal items**

- (1) A licensee shall have the following duties in regard to transmission of postal items:
  - (a) carry mail from the sender to the intended destination;
  - (b) put measures in place to safeguard mail against loss, theft, fraud, damage and tampering;
  - (c) exercise due care in handling and processing of mail to prevent loss, theft, damage and tampering;
  - (d) notify the sender within a reasonable period of its inability to deliver the mail on time. The notification may be made by sms, email, telephone, letter or radio announcement;
  - (e) oversee the screening process of deliveries of mail that are channelled during the conveyance process; and
  - (f) ensure that suspicious mail is detected and disposed of.

#### **18. Legal possession of mail**

- (1) A licensee shall be deemed to possess mail from the moment that mail is handed to the licensee or his agent.
- (2) A licensee ceases to be in possession of mail as soon as it passes to the addressee, upon delivery of the mail.
- (3) A licensee shall be liable for damage, loss and theft of mail from the point of receipt until delivery of the mail.

## 19. Security of postal items

- (1) A licensee shall ensure security of postal items in its possession by maintaining strict access control to the area where it keeps its postal items.
- (2) The strict access control measures envisaged in sub-rule (1) shall include but not limited to:
  - (a) Controlling access to areas where postal items are handled;
  - (b) Ensuring adequate supervision of staff, who may have access to high-value or high risk postal items;
  - (c) Enforcement of limited access to restricted areas;
  - (d) installing alarms and surveillance equipment;
  - (e) limiting access restricted areas to authorized personnel only;
  - (f) locking up high-value items; and
  - (g) any other measure specified by the Authority.
- (3) A licensee shall maintain a register with accurate records of the amount of postal items processed.
- (4) The register referred to in sub-rule (3) shall be kept for a period of three (3) years.
- (5) A licensee shall develop and submit to the Authority security procedures for handling of postal items which shall include:
  - (a) regular risk assessment;
  - (b) records indicating as far as is reasonably practicable, its personnel responsible for the conveyance, receipt, collection, sorting, delivery or handling of specific postal items that have been tampered with;
  - (c) measures to be taken, including monitoring, to prevent, detect loss or theft of, damage to, or tampered with, postal item from or at premises, vehicles or equipment; and
  - (d) any other measure specified by the Authority.
- (6) A licensee shall submit to the Authority the security procedures referred to in sub-rule (5) within ninety (90) days from the date of issue of licence or its anniversary for existing licensees.

(7) The security procedures made pursuant to sub-rule (6) above, may be reviewed and updated annually or as and when necessary.

## **20. Dangerous/ Prohibited items**

(1) A licensee shall develop and display in a conspicuous place within its premises, a notice containing a list of dangerous and prohibited goods that shall not be conveyed through.

(2) Prohibited items are those that cannot be admitted or conveyed under any circumstances and these shall amongst other items, include:

a) items sent in furtherance of a fraudulent act or with the intention of avoiding full payment of the appropriate charges.

b) hazardous/dangerous items such as:

- i. Explosives;
- ii. Flammable materials;
- iii. Noxious or deleterious substances;
- iv. Sharp instruments not properly protected; or
- v. Living creatures that are wither noxious or likely to injure any individual or damage any postal item in the course of transmission by post or courier;
- vi. Dangerous goods as defined by the International Air Transport Association (IATA).

c) indecent, obscene, seditious, scurrilous, threatening or grossly offensive postal items;

d) narcotics and psychotropic substances, or other illicit drugs which are prohibited in the country of destination;

e) counterfeit or pirated items;

f) items which, by their nature or their packing, may expose officials or the general public to danger, or soil or damage other items, postal and courier equipment or third-party property;

g) items prohibited at import into destination countries by the Convention on International Trade in Endangered Species (CITES) of Wild Fauna and Flora such as fur, ivory and ivory products;

h) coins, bank notes and other valuable items; and

i) any other items which is prohibited by the Laws of Lesotho.

## **21. Transmission of foreign postal items**

- (1) A licensee shall ensure that the transmission of postal items addressed to or received from any country outside Lesotho shall be subject to the provisions of UPU Constitution and Convention and any other convention or agreement in regard to the transmission of such items for the time being in force between the Government of Lesotho and the postal authority of such country.

## **22. Postal items subject to customs and excise laws**

- (1) A licensee shall ensure that the postal items handed in for transmission to or received from any place outside Lesotho shall be accompanied by such forms, duly completed by the sender or receiver, as may be required by any relevant Customs and Excise laws of the country.

## **23. Packing of postal items**

- (1) A licensee shall ensure that a sender of a postal item has packed and secured the item in such a manner that affords adequate protection to:
  - (a) the contents thereof;
  - (b) other postal items in the course of transmission; and
  - (c) employees of the licensee.
- (2) A licensee shall be liable for any damage caused to other postal items as a result of the dispatch of items not acceptable for conveyance or by the non-observance of the conditions of acceptance, provided there has been no fault or negligence on the part of the licensee.
- (3) A licensee may refuse to transmit any postal item which does not comply with sub-section (1).

## **24. Transparent or panel envelopes**

- (1) A licensee shall not transmit a postal item in envelopes with a transparent panel unless they comply with the following conditions:
  - (a) the transparent panel shall be parallel to the length of the envelope so that the addressee appears in the same direction and the application of the date stamp is not interfered with; and



(b) the transparent panel:

- i. shall be sufficiently transparent for the address to be perfectly legible even in artificial light;
- ii. shall take writing in ink;
- iii. shall not reflect artificial light;
- iv. shall be at least 40 mm from the top edge of the envelope, 15 mm from the right-hand, left-hand and bottom edges;
- v. shall not be bordered by a coloured band or frame;
- vi. only the name and address of the addressee shall show through the panel and the contents of the envelope shall be so folded that the address cannot be obscured, wholly or partly, through slipping; and
- vii. the address shall be legibly indicated in ink or by a printing process in a deep colour.

(2) A licensee shall not transmit postal items in envelopes with an open panel.

## **25. Literature for the blind**

(1) A licensee shall transmit for free, any postal item consisting of periodicals, books and papers of any kind including unsealed letters, impressed in Braille or other special type for the use of the blind provided:

- (a) that the packing and make-up conform to the specifications applicable to printed papers and the words "Literature for the blind" are clearly marked on the upper left-hand corner of the address side; and
- (b) that they are sent by or addressed to an officially recognized institute for the blind.

## **26. Use of Technology**

(1) A Licensee shall use appropriate technology to enhance the quality of services offered to the public.

## **27. Collaboration and Interconnection Agreements**

(2) The Authority shall permit service interconnection with mutual agreement among various licensees.

(3) The interconnection agreement shall be based on mutually agreed commercial rates that are non-discriminatory.

- (4) Licensees shall submit their interconnection agreements with the Authority for approval.

#### **PART IV - DELIVERY OF POSTAL ITEMS AND DISPOSAL OF UNDELIVERED POSTAL ITEMS**

##### **28. Delivery of Recorded and/or Insured Postal items**

- (1) A licensee shall deliver recorded postal items and/or insured letters to the address specified on the postal item.
- (2) Notwithstanding sub-section (1), a licensee may withhold the item and notify the addressee to collect at the office of delivery to ensure compliance with any other laws of the country.
- (3) The addressee of a recorded postal item and/or insured letter may be required to provide identification to the representative of the licensee before delivery is done.

##### **29. Items to indicate return address of sender**

- (1) A Licensee shall ensure that a sender of any postal item indicates on the cover, wrapper or envelope a return address; and
- (2) A Licensee shall return to the sender any postal item.

##### **30. Disposal of undelivered items**

- (1) All Licensees shall file with the Authority, their documented procedures for the disposal of items deemed undeliverable.
- (2) Licensees shall give due regard to the following parameters in developing their disposal procedures and policies:
  - (a) The circumstances under which an item shall be deemed to be undeliverable;
  - (b) steps to be exhausted before an item is determined to be undeliverable;
  - (c) the retention period for undeliverable items; and
  - (d) the process of disposal.
- (3) Where the Licensee is satisfied that the addressee of a postal item is dead, the item shall be retained and on production of the probate of postal item of

administration to the estate of the addressee, together with the written application of one or more of the executors or administrators, deliver or release the item to the executor or the administrator of the addressee.

## **PART V – SALE AND USE OF POSTAGE STAMPS**

### **31. Licence to sell postage stamps**

- (1) A public postal licensee shall issue postage stamps and other philatelic instruments to denote the prepayment of postal and other service charges.
- (2) The Authority may from time to time issue guidelines on postage stamps.

## **PART VI- COMPENSATION FOR LOSS OF REGISTERED OR INSURED POSTAL ITEMS**

### **32. Compensation**

- (1) Unless otherwise provided for in these Rules a Licensee shall pay compensation in respect of the loss or damage of any postal item which is registered or the loss of declared contents of any postal item while the postal item is in the custody of the licensee.

### **33. Compensation not payable in certain cases**

- (1) A Licensee shall not be liable to pay compensation in respect to:
  - (a) any postal item which has been posted unregistered;
  - (b) contents of a postal item which have not been declared;
  - (c) any postal item containing anything which may not be lawfully sent by post; and
  - (d) a registered postal item lost or which cannot be traced because of the loss of relative documents as result of force majeure; or
  - (e) a postal item lost or damaged as a result of the negligence or omission on the part of the sender.

### **34. Application for compensation**

- (1) A person applying for compensation under this Part shall, produce to the Licensee any of the following documents:

- (a) the receipt given to the sender at the time the postal item was registered;
- (b) the envelope or cover of the registered item in as nearly as possible the condition in which it was delivered by the licensee.

(1) A Licensee may refuse to consider an application for compensation:

- (a) unless the sender and the addressee make such affidavits or affirmations as may be required by the licensee.
- (b) if the application is made after the expiration of 12 months from the date of registration of the postal item.

### **35. Damaged postal item to be retained for inspection**

(1) In any application for compensation which relates to damage to a postal item, or to damage to, or loss of, any item contained therein, the postal item shall be retained for inspection as nearly as possible in the state in which it was delivered.

### **36. Verification of contents when damage apparent**

(1) Where a postal item at the time of delivery is found to have signs of damage, the recipient shall call attention to the fact of such damage and, if possible, open the item in the presence of an employee of the licensee, and, in such a case, the contents of the item shall be verified and entered in an inventory, which shall be prepared in duplicate and signed by the addressee.

### **37. Disposal of compensated items**

(1) A Licensee may retain or dispose any postal item in respect to which it has paid compensation under this Part.

### **38. Person to whom compensation may be given**

(1) A Licensee shall pay compensation under this Part to the sender of the postal item in respect of which compensation is claimed or to the addressee of a postal item upon the production of proof that the sender has waived any claim to compensation.

### **39. Repayment of postage charges**

(1) A Licensee shall repay the sender any charge for postage of a postal item which is lost or the contents of which are completely destroyed and compensation has been paid for.

## **PART VII – ACCOUNTABILITY AND ENFORCEMENT**

### **40. Provision of information by Licensees**

- (1) A Licensee shall be obliged to furnish to the Authority any information the Authority so requires, including but not limited to the financial information and any other pertinent and relevant information as the Authority deems necessary.

### **41. Inspections and Investigations**

- (1) Any duly authorised officer of the Authority may:
- (a) enter the premises of a holder of a licence to determine whether the provisions of the Act and the licence are being complied with;
  - (b) inspect and make copies of or extracts from books, records or other documents;
  - (c) demand the production of and inspect the relevant licence; and
  - (d) inspect facilities and premises relevant to an investigation.

## **PART VIII - MISCELLANEOUS**

### **42. Consumer Rights**

- (1) A consumer of postal or courier services has the right to:
- (a) file a complaint with the licensee within three months of receiving the service;
  - (b) receive clear and complete information about rates, terms and conditions for available and proposed products and services;
  - (c) be charged only for the products and services subscribed to;
  - (d) where possible, select a service provider and service of the consumer's choice;

- (e) personal privacy and protection against the unauthorized use of personal information;
- (f) bills that are accurate and that are capable of being understood for products and services authorized by the consumer and to fair and prompt redress in the event of a dispute in the provision of the products and services;
- (g) protection from unfair trade practices, including false and misleading advertising and anti-competitive behaviour by licensees; and
- (h) equal opportunity for access to the same type and quality of service as other consumers in the same area at substantially the same rate subject to the appropriate technology required to serve specific consumers.

#### **43. Complaints handling procedure**

- (1) The Licensee shall develop and submit customer complaints guidelines to the Authority for approval.
- (2) The guidelines shall indicate:
  - a) the procedure for making enquiries and complaints;
  - b) customer's right to complain about the content and the quality of the services provided
  - c) timeframe within which to resolve a complaints; and
  - d) further recourse available to a customer who is dissatisfied with the Licensee's complaints handling.
- (3) The guidelines relating to enquiries and complaints shall be published and be made available to customers.
- (4) The Licensee shall keep and maintain records on enquiries and complaints made on the licensed services indicating:
  - a) The nature and number of complaints received.
  - b) The main complaints handled and resolved.

#### **44. Enforcement**

- (1) Where the Authority is satisfied that a licensee is contravening or has contravened the Act, or Rules made under the Act or any condition of its licence, it shall commence investigations for the purpose of securing compliance with the Act, Rules or condition in question.

- (2) Where the investigations under sub-rule (1) indicate that there is likely breach of the Act, Rules or condition of the licence, the Authority shall make its determination on the matter.
- (3) In making its determination, the Authority:
- (a) may provide an opportunity for public comments on the material issues, through a public consultation and shall consider the comments received;
  - (b) shall not be bound by technicalities, legal forms or rules of evidence but shall make determinations in a manner which is just and fair;
  - (c) shall act as expeditiously as a proper consideration of the matter may allow, having regard to the need to carefully and quickly inquire into and investigate a dispute and all matters affecting the merits and fair settlement of the dispute; and
  - (d) shall accord an opportunity to the licensee to respond to any allegation of breach after giving it sufficient notice of not less than seven days.
- (4) Notwithstanding sub-section (3), the Authority may at any time issue an interim order directing a licensee to stop a specific conduct or to take a specific act where the Authority is satisfied that:
- (a) there is prima facie evidence that the licensee contravened the Act, Rules made there-under or the licence;
  - (b) continuation of the licensee's conduct is likely to cause serious harm to other operators, consumers or the general public; or
  - (c) the potential harm in allowing a licensee to continue its conduct outweighs the burden on the licensee.
- (5) Where the Authority determines that a licensee has contravened any conditions of a licence, the Act or Rules made there-under, the Authority may impose any of the following regulatory sanctions:
- (a) issue a compliance order;
  - (b) issue a cease and desist order;
  - (c) impose a fine;
  - (d) issue warnings;
  - (e) suspend a licence;

- (f) revoke the licence; or
  - (g) make any other order considered appropriate.
- (6) In imposing a fine, under sub-rule (5), the Authority shall consider any aggravating factors, including:
- (a) the gravity of the contravention;
  - (b) the duration of the contravention;
  - (c) whether the contravention resulted in injury to a person or property;
  - (d) whether the licensee acted knowingly, recklessly, or in a negligent manner;
  - (e) whether the licensee has a previous history of contraventions; or
- (7) In imposing a fine the Authority may, in addition consider any mitigating factors including:
- (a) whether the contravention is minor;
  - (b) whether the consequence from the violation is minor;
  - (c) whether the licensee took prompt action to correct the contravention;
  - (d) whether the contravention was accidental; or
  - (e) whether the licensee voluntarily disclosed the contravention to the Authority.
- (8) The Authority shall in all cases of enforcement impose sanctions that give a significant deterrent to impermissible conduct, but the sanctions shall be proportionate to the severity of the contravention.