

THE REGULATORY AUTHORITIES APPEAL TRIBUNAL BILL
(No. III of 2005)

Explanatory Memorandum

The object of this Bill is to provide for -

- (a) the establishment of the Regulatory Authorities Appeal Tribunal to hear and determine appeals from decisions of the ICT Authority, the Postal Authority, the Data Protection Commissioner and the Utility Regulatory Authority; and
- (b) matters connected thereto.

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A BILL

To establish the Regulatory Authorities Appeal Tribunal

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Regulatory Authorities Appeal Tribunal Act 2005.

2. Interpretation

In this Act, unless the context requires or otherwise expressly provided -

"Chairperson" means the Chairperson of the Tribunal appointed under section 3;

"Data Protection Commissioner" means the Data Protection Commissioner appointed under section 4 of the Data Protection Act 2004;

"Deputy Chairperson" means a Deputy Chairperson of the Tribunal appointed under section 3;

"ICT Acts" means the ICT Acts specified in the First Schedule;

"ICT Authority" means the Information and Communication Technologies Authority established under section 4 of the Information and Communication Technologies Act 2001;

"member" includes the Chairperson and every Deputy Chairperson;

"Postal Authority" means the Postal Authority established under section 4 of the Postal Services Act 2002;

"regulatory authority" means a regulatory authority specified in the Second Schedule;

"Regulatory Authorities Acts" means the ICT Acts and the Utility Acts, specified in the First Schedule;

"relevant Minister" means, in the case of -

- (a) a member of the Information and Communication Technologies Appeal Division, the Minister to whom responsibility for the

subject of information and communication technologies is assigned;

- (b) a member of the Utilities Regulation Appeal Division, the Minister to whom responsibility for the subject of public utilities is assigned;

"Tribunal" means the Regulatory Authorities Appeal Tribunal established under section 3;

"Utility Acts" means the Utility Acts specified in the First Schedule;

"Utility Regulatory Authority" means the Utility Regulatory Authority established under section 4 of the Utility Regulatory Authority Act 2004.

3. Establishment of Regulatory Authorities Appeal Tribunal

(1) There is established for the purposes of the Regulatory Authorities Acts a Regulatory Authorities Appeal Tribunal which shall consist of -

- (a) a Chairperson, and one or more Deputy-Chairpersons, who shall be barristers of not less than 10 years' standing, appointed by the Public Service Commission;
 - (b) such other members, not exceeding 4 in number for each division, as may be appointed by the Attorney-General after consultation with the Prime Minister and the relevant Minister.
- (2)
- (a) For the purposes of hearing and determining an appeal under this Act, the Tribunal shall sit in 2 divisions, which shall be known as the Information and Communication Technologies Appeal Division and the Utilities Regulation Appeal Division.
 - (b) Each division shall be constituted of the Chairperson, or a Deputy-Chairperson, and 2 members.
 - (c) The Chairperson, or Deputy-Chairperson, shall preside over every sitting of the Tribunal.

(3) Every member, other than the Chairperson and Deputy-Chairpersons, shall hold office for a term of 3 years and may be eligible for reappointment.

(4) Where the Attorney-General is of opinion that the state of business at the Tribunal requires that the number of members should be temporarily increased, he may, after consultation with the Prime Minister and the relevant Minister, appoint such additional members on an ad hoc basis and for such period as he considers necessary to serve in a particular division of the Tribunal.

(5) Every member, other than the Chairperson and Deputy-Chairpersons, shall be paid such fees as the Attorney General may approve.

4. Staff of the Tribunal

The Tribunal shall be provided with such public officers, including a Secretary, as are necessary for the proper functioning of the Tribunal.

5. Disqualification from membership

(1) No person shall be eligible to remain a member of the Tribunal if -

- (a) he is found guilty of any misconduct or default in the discharge of his duties as a member which renders him unfit to be a member;
- (b) he is convicted of an offence of such nature as renders it desirable that he should be removed from office; or
- (c) he is suffering from such mental or physical infirmity as renders him unfit to discharge his duties as a member.

(2) The Attorney-General shall remove from office a member, other than the Chairperson or Deputy-Chairperson, where he is satisfied that the member is not eligible to remain a member of the Tribunal pursuant to subsection (1).

6. Jurisdiction of the Tribunal

(1) The Tribunal shall hear and dispose of any appeal against a decision of a regulatory authority in respect of its functions under the relevant Regulatory Authorities Act.

(2) Every appeal under subsection (1) shall -

- (a) subject to subsection (3), be lodged with the Tribunal within a period of 21 days of the date of notification of the decision of the regulatory authority to the aggrieved person; and

(b) be in such form and be accompanied by such fee as may be prescribed.

(3) The Tribunal may entertain an appeal after the expiry of the period of 21 days if it is satisfied that there was sufficient cause for not lodging the appeal within that period.

(4) The Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit, confirming, varying or setting aside the decision appealed against.

(5) The Tribunal shall send a copy of every order made by it to the parties to the appeal, including the regulatory authority of which the decision was appealed against.

(6) Any appeal lodged before the Tribunal under subsection (1) shall be dealt with by it as expeditiously as possible and the Tribunal shall endeavour to dispose of the appeal within 6 months of the date on which the appeal was lodged.

7. Procedure and powers of the Tribunal

(1) The Tribunal shall sit at such place and time as the Chairperson, or a Deputy Chairperson, may determine.

(2) Where the Tribunal adjourns any proceedings, it may resume them at such place and time as the Chairperson or a Deputy Chairperson may determine.

(3) Subject to any regulations made under section 14, all appeals before the Tribunal shall be instituted and conducted -

(a) as far as possible in the same manner as proceedings in a civil matter before a District Magistrate;

(b) in accordance with the law of evidence in force in Mauritius.

(4) The Tribunal may -

(a) make such orders for requiring the attendance of persons and the production of articles, documents or other electronic records, as it thinks necessary or expedient;

(b) take evidence on oath and may, for that purpose, administer oaths;

- (c) on its own motion, call and hear any person as witness;
and
 - (d) adopt such procedure as may be necessary for the proper functioning of the Tribunal.
- (5) Any person who -
- (a) fails to attend the Tribunal after having been required to do so under subsection (4)(a);
 - (b) refuses to take an oath before the Tribunal or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal or to produce any article or document when required to do so by the Tribunal;
 - (c) knowingly gives false evidence or gives evidence which he knows to be misleading before the Tribunal;
 - (d) at any sitting of the Tribunal -
 - (i) wilfully insults any member thereof;
 - (ii) wilfully interrupts the proceedings, or commits any contempt of the Tribunal,

shall commit an offence.

8. Right to legal representation

The appellant may prosecute his appeal either in person or by a law practitioner.

9. Determination of the Tribunal

- (1) (a) Where the Tribunal is unable to reach a decision by unanimity, the Tribunal shall proceed to give its determination by a majority, which shall include the Chairperson or the Deputy Chairperson.
- (b) Where the majority does not include the Chairperson or Deputy Chairperson, the Tribunal shall be reconstituted so as to include both the Chairperson and Deputy Chairperson, and 2 members.

(c) In the event of an equality of votes, after the Tribunal has been reconstituted, the opinion of the Chairperson shall prevail.

(2) No member of the Tribunal who has a direct interest in any cause or matter which is the subject of proceedings before the Tribunal shall take part in those proceedings.

(3) Subject to section 11, every order or finding of the Tribunal on any cause or matter before it shall be final and binding on the parties.

(4) On hearing an appeal, the Tribunal may confirm, amend, vary or cancel any decision made by the regulatory authority of which the decision is appealed against.

(5) Where a decision is confirmed or varied, the Tribunal shall specify the delay within which it shall be complied with.

(6) Any person who fails to comply with an order of the Tribunal within the delay specified by the Tribunal shall commit an offence.

(7) (a) The Tribunal may make such order as to costs as may be prescribed.

(b) An order made under paragraph (a) shall be enforced in the same manner as an order for costs in proceedings before a Magistrate.

(8) Proceedings before the Tribunal shall be exempt from registration dues.

(9) Where a person has given notice of appeal against a decision referred to in section 6(1) and, before the appeal is determined by the Tribunal, a written agreement is reached between the regulatory authority of which the decision is appealed against and the appellant, the agreement shall be deemed to be a determination of the Tribunal.

10. Burden of proof

Notwithstanding any other enactment, the burden of proof in any proceedings before the Tribunal shall lie on the person challenging the decision of the regulatory authority.

11. Appeal to the Supreme Court

(1) Any party who is dissatisfied with the order or findings of the Tribunal relating to an appeal as being erroneous in point of law may appeal to the Supreme Court.

(2) No appeal shall lie against a determination made by the Tribunal following an agreement reached with the consent of the parties or their representatives under section 9(9).

(3) Any party wishing to appeal to the Supreme Court under subsection (1) shall, within 21 days of the date of the order of the Tribunal -

(a) lodge with the Secretary of the Tribunal a written notice of appeal, stating the grounds of appeal;

(b) serve a copy of the notice of appeal on the other party.

(4) An appeal under this section shall be prosecuted in such manner as may be provided by rules made by the Supreme Court.

12. Decision not suspended on appeal

The decision of the regulatory authority which is appealed against shall not be suspended where an appeal is made to the Tribunal or the Supreme Court under this Act, unless the Tribunal or the Court orders otherwise.

13. Offences

Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 20,000 rupees and to penal servitude for a term not exceeding 5 years.

14. Regulations

(1) The Attorney-General may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide for –

(a) the amendment of the Schedules;

(b) the payment of fees and levying of charges.

15. Consequential amendments

(1) The Information and Communication Technologies Act 2001 is amended -

- (a) in section 2, by deleting the definition of "Tribunal" and replacing it by the following new definition -

"Tribunal" means the Regulatory Authorities Appeal Tribunal established under section 3 of the Regulatory Authorities Appeal Tribunal Act 2005;

- (b) by repealing Part VIII and replacing it by the following new Part -

PART VIII - TRIBUNAL

36. Appeal to the Tribunal

(1) Any person aggrieved by any decision of the ICT Authority regarding information and communication technologies may appeal to the Tribunal in the manner prescribed in the Regulatory Authorities Appeal Tribunal Act 2005.

(2) The Tribunal shall hear and dispose of any appeal against a decision of the ICT Authority in accordance with the Regulatory Authorities Appeal Tribunal Act 2005.

- (2) The Postal Services Act 2002 is amended –

- (a) in section 2, by deleting the definition of "ICT Appeal Tribunal" and replacing it by the following new definition –

"Tribunal" means the Regulatory Authorities Appeal Tribunal established under section 3 of the Regulatory Authorities Appeal Tribunal Act 2005;

- (b) in section 15 –

- (i) in subsection (1), by deleting the words "ICT Appeal Tribunal" and replacing them by the word "Tribunal";

- (ii) by deleting subsection (2) and replacing it by the following new subsection –

- (2) The Tribunal shall hear and dispose of any appeal against a decision of the Authority in accordance with the Regulatory Authorities Appeal Tribunal Act 2005.

- (3) The Data Protection Act 2004 is amended -
- (a) in section 2, by deleting the definition of "Tribunal" and replacing it by the following new definition -

"Tribunal" means the Regulatory Authorities Appeal Tribunal established under section 3 of the Regulatory Authorities Appeal Tribunal Act 2005;

- (b) by repealing sections 58 and 59 and replacing them by the following new section -

58. Appeal to the Tribunal

(1) Any person aggrieved by any decision of the Data Protection Commissioner regarding data protection may appeal to the Tribunal in the manner prescribed in the Regulatory Authorities Appeal Tribunal Act 2005.

(2) The Tribunal shall hear and dispose of any appeal against a decision of the Data Protection Commissioner in accordance with the provisions of the Regulatory Authorities Appeal Tribunal Act 2005.

(4) Section 2 of the Utility Regulatory Authority Act 2004 is amended in the definition of "Tribunal", by deleting the figure "2004" and replacing it by the figure "2005".

16. Savings and transitional provisions

(1) The Chairperson of the Information and Communication Technologies Appeal Tribunal appointed under the repealed section 36 of the Information and Communications Technologies Act 2001 shall continue as the Chairperson of the Tribunal established under this Act, on the same terms and conditions as those applicable to him on the coming into operation of this Act.

(2) The members of the Information and Communication Technologies Appeal Tribunal appointed under the repealed section 36 of the Information and Communication Technologies Act 2001 shall continue as members of the Tribunal established under this Act on the same terms and conditions as those which were applicable to them on the coming into operation of this Act, and for a term expiring on the day on which their appointment would have expired if this Act had not come into operation.

- (3) Every appeal made under -

- (a) the repealed section 39 of the Information and Communication Technologies Act 2001;
- (b) section 15 of the Postal Services Act 2002; or
- (c) the repealed sections 58 and 59 of the Data Protection Act 2004,

and pending before the Information and Communication Technologies Appeal Tribunal on the coming into operation of this Act shall be continued and dealt with by the Tribunal.

(4) Every determination of the Information and Communication Technologies Appeal Tribunal shall, on the coming into operation of this Act, be deemed to be a determination of the Tribunal under this Act.

- (5) (a) Any appeal made to the Supreme Court against a determination of the Information and Communication Technologies Appeal Tribunal shall be deemed to be an appeal made to the Supreme Court against a determination of the Tribunal under this Act.
- (b) Where, after hearing an appeal against a determination of the Information and Communication Technologies Appeal Tribunal, the Supreme Court decides to remit the matter for determination, the matter shall be remitted to the Tribunal established under this Act, which shall have the power to hear and determine the matter.

17. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

FIRST SCHEDULE

(section 2)

Regulatory Authorities Acts

ICT Acts

Information and Communication Technologies Act 2001

Postal Services Act 2002

Data Protection Act 2004

Utility Acts

Central Water Authority Act

Electricity Act

Waste Water Management Authority Act

Utility Regulatory Authority Act 2004

SECOND SCHEDULE

(section 2)

Regulatory Authorities

Data Protection Commissioner

ICT Authority

Postal Authority

Utility Regulatory Authority