

RULES AND PROCEDURES OF THE PRESS COMPLAINTS COMMISSION OF SRI LANKA

A. MAKING A COMPLAINT

1. Any person who reasonably believes that he or she or another person/s have been adversely affected by any published item including a news story, article, photograph and/or graphic ("Published Item"), that appeared in a newspaper or a magazine or a Journal or an Online edition thereof published in Sri Lanka may make a complaint to the Press Complaints Commission of Sri Lanka ("PCCSL"). Such complaint shall satisfy the following requirements:
 - (a) it shall be in the prescribed complaint form, which may be downloaded from the PCCSL website, at http://www.pccsl.lk/make_complains.php;
 - (b) it shall be a concise statement in writing, describing the issue and shall be duly signed by the complainant;
 - (c) it shall be communicated to the PCCSL in person, by registered post, facsimile, e-mail or any other electronic means;
 - (d) any Published Item/s in an online edition (website) can either be downloaded and a print out obtained and/or forwarded to the PCCSL if such Published Item is available on the online edition and or traced from any archive of the online edition or any link to that online edition .
 - (e) the Published Item alleged to have affected the complainant adversely shall be annexed to the complaint; provided however, that where the complaint is made via e-mail or any other electronic means, the complainant shall attach the Published Item to the complaint.
 - (f) Where the complainant is unable to find a copy of the Published Item, the PCCSL Secretariat shall make every endeavour to assist the complainant in finding such Published Item.
2. (a) The complainant may request the PCCSL to:
 - (i) settle a dispute by conciliation
 - (ii) settle a dispute by mediation; or
 - (iii) refer the matter for adjudication by arbitration

Provided however that in the event that pursuant to action taken by the Dispute Resolution Council of the Commission (hereinafter referred to as the "Council") as set out under (7) below, the editor of the relevant newspaper, journal, magazine or online edition thereof agrees to publish a correction and/or apology and/or a right of reply, which in the Council's view addresses and rectifies the issue complained about, the parties shall not proceed to conciliation, mediation and/or arbitration.

- (b) Where the complainant requests the PCCSL to refer the matter for adjudication by arbitration, the complaint must, in addition to the requirements set out under (1) above, satisfy the following requirements:
 - (i) the material facts and circumstances of the dispute shall be set out;

- (ii) a statement of evidence shall be provided; and
 - (iv) the relief sought by the complainant shall be specified.
3. A complaint made against any Published Item after one year from its publication shall not be entertained by the PCCSL.

B. THE ROLE OF THE COUNCIL

4. The Council shall accept a duly received complaint only if it deems, at its complete discretion that the Published Item referred to has breached the Code of Professional Practice of the Editors Guild of Sri Lanka for the time being, as adopted by the Sri Lanka Press Institute ("SLPI") and the PCCSL.
5. Where the members of the Council are of the opinion that the Published Item has not breached the Code of Professional Practice of the Editors Guild of Sri Lanka, it shall reject the complaint and provide reasons therefor in written form, to the complainant within two (2) weeks of receiving the complaint. In the event that notice of refusal has not been provided to the complainant it shall be deemed that the complaint has been accepted by the Council with effect from the date on which the same was received by the Council.
6. Once the complaint is accepted, the Council shall within one (1) working day thereof, communicate the same to the editor of the newspaper, journal, magazine or online edition thereof which contained the Published Item which allegedly adversely affected the complainant, along with a copy of the complaint. The Council shall, along with such communication call on the said editor to act on the complaint and/or reply to the Council on the complaint within a period of five (5) working days of receiving the communication.
7. In the event that the editor of the newspaper or magazine to whom the communication is made as aforesaid, does not respond to the same by the due date, the Council shall forthwith directly refer the complaint to the publisher for action on the matter and/or a reply to the Council; provided however that where the editor or the publisher (as the case may be), or a person acting for and on behalf of such editor or publisher requests for time to reply, such further time may be granted by the Council at its discretion.

Provided further, that if a correction and/or a right of reply is published in the newspaper, journal, magazine or online edition, it would be deemed to be a reply.

8. The Council shall make all endeavours to facilitate the parties to enter into a settlement within the shortest period of time, but not later than two (2) weeks from the date of accepting the complaint.

C. CONCILIATION

9. Where a complainant has, along with the complaint, made a request to the PCCSL that the matter be settled by conciliation, the Council shall refer such request to the Chief Executive Officer of the Council (CEO) for conciliation. A settlement agreed upon by the parties may include a correction and/or apology and/or a right of reply.
10. Where there are existing circumstances or those that may arise, which are likely to give rise to reasonable doubt on the impartiality and independence of the CEO to whom the matter is referred for conciliation, the CEO shall disclose such circumstances to the Council in writing and the Council shall refer the complaint to a member of the Council for conciliation.
11. In the event that the Council is of the opinion that the matter is not likely to be resolved through conciliation, the Council may propose, for the consideration of the parties, other means of resolving the dispute.

D. MEDIATION

12. Where a complainant has, along with the complaint, made a request to the PCCSL that the matter be settled by mediation, the Council shall refer such request to the CEO or three members of the Council for mediation.
13. (a) Where there are existing circumstances or those that may arise, which are likely to give rise to reasonable doubt on the impartiality and independence of the CEO or a member of the Council to whom the matter is referred for mediation, the CEO or the member of the Council (as relevant) shall disclose such circumstances to the Council in writing and shall not act as mediator in such matter;

(b) In the event that such a written disclosure of interest in the matter is provided by the CEO or any member of the Council (as relevant) appointed to mediate the matter, as stipulated in (a) above, the Council shall appoint another member of the Council in place of the member withdrawing.
14. In the event that the CEO or the Council is of the opinion that the matter is not likely to be resolved through mediation, the Council may propose, for the consideration of the parties, other means of resolving the dispute.
15. The Council shall determine the procedure for mediation so as to facilitate an expeditious and economical resolution of the dispute by mediation. In general:
 - (a) each party shall be given a fair hearing and an opportunity to present its case in conformity with the principles of natural justice;
 - (b) a dispute shall be settled within two (2) weeks of the date when the dispute was referred to the CEO or three-members of the Council (as relevant), however this period may be extended at the request of the parties;

16. Mediation proceedings shall terminate:

- (a) upon the parties reaching a settlement agreement;
- (b) upon a declaration issued by the Council on the recommendation of the CEO or the three members of the Council (as relevant) appointed to mediate the matter, stating that it is unlikely that the proceedings would lead to the resolution of the dispute; or
- (c) upon a written request by any one of the parties requesting for the termination of mediation proceedings.

In the event that mediation proceedings terminate on the grounds provided under (b) and (c) above, the Council shall refer the matter for arbitration by the Council as provided for under Part E below; provided however that a member who was involved in mediation proceedings shall not be appointed to the panel of arbitrators.

Provided however that a complainant may withdraw the complaint should he or she not be willing to proceed to arbitration.

E. ARBITRATION

17. The request made to the PCCSL by a complainant to arbitrate a dispute between himself and a member of the PCCSL, arising from any publication in the press of Sri Lanka, or the consent of the complainant to any referral for arbitration made by the Council in terms of clause 11 or clause 16 above, together with the deemed consent of the member of the PCCSL in terms of article 12 of the articles of association of the PCCSL, shall be deemed to be an arbitration agreement” within the meaning of the Arbitration Act No. 11 of 1995 between the said member of the public and the particular member of the PCCSL to refer such dispute for resolution by Arbitration.

18. Where a complainant has, along with the complaint, made a request to the PCCSL that the matter be settled by arbitration, or where the Council has referred the matter for arbitration further to clause 11 or clause 16 above, the Council shall appoint a three (3) member panel of the Council as arbitrator and refer the dispute to such panel for arbitration.

19. Where the parties to the dispute object to the appointment of one or more of the member/s constituting the panel the Council shall appoint another member or members of the Council in place thereof.

20. (a) Where the three member panel of the Council sits as the arbitrator:
- (i) the quorum for any adjudication thereby shall be two (2) members;
 - (ii) the Council shall always maintain a non-press related members majority; and
 - (iii) the majority opinion shall prevail, provided that in the event a matter is taken up by two (2) arbitrators forming the quorum, a decision shall require unanimity.

(b) The three (3) member panel of the Council may, at its discretion, refer any matter to a fuller panel with the consent of the parties. The quorum in such event shall be two (2) members less than the composition of the relevant panel.

21. Where there are existing circumstances or those that may arise, which are likely to give rise to reasonable doubt on the impartiality and independence of any member of the Council to whom the matter is referred to for arbitration, such member of the Council shall disclose such circumstances to the Council in writing and shall not act as arbitrator in such matter.

In the event such a written disclosure of interest in the matter is provided by the member of the Council appointed to arbitrate the matter, as stipulated in (a) above, the Council shall appoint another member of the Council in his/her place.

22. The Council shall determine the procedure for arbitration so as to facilitate expeditious and economical resolution of the dispute. In general:

- (a) each party shall be given a fair hearing and an opportunity to present its case in conformity with the principles of natural justice;
- (b) at the request of the arbitrator, the parties shall state the evidence on which they wish to rely on, specifying what they wish to prove thereby;
- (c) the Council shall require the parties to the dispute to be comprehensive in any or all statements submitted and in case the complainant fails to comply with such requirement, the arbitrator may at his discretion dismiss the case; provided however that in the event the relevant editor and/or publisher fails to comply with the said requirement, such failure shall not prevent the continuation of proceedings;
- (d) in the event that a party fails to appear at a hearing or otherwise comply with an order and does not show valid cause for such failure, such failure shall not prevent the arbitrator from proceeding with the case or rendering an award;

23. The arbitrator shall grant an arbitral award in accordance with the following:

- (a) the powers of the arbitrator to award relief in arbitral proceedings shall be limited to making an order to the editor and/or publisher to publish a right of reply and/or correction and/or apology in the media in which the relevant publication took place, unless the power to award any other relief is expressly conferred on the arbitrator in writing by the parties. Provided however that the arbitrator may specify a date and/or a page number and/or placement on a particular page of the said publication including online editors for the execution of the arbitral award;
- (b) an arbitral award shall be made after having conscientiously considered and evaluated all aspects of the proceedings and after the arbitrator determines what has been proved in the case;

- (c) an arbitral award shall be made not later than one (1) month from the date on which the matter was referred for arbitration;
- (d) a separate issue or part of the matter in dispute between the parties may at the request of a party be decided by a separate award; provided however that where the other party objects to the same, a separate award may be rendered by the arbitrator if it is deemed that there are exceptional reasons therefor;
- (e) where a party has partially admitted a claim, the arbitrator may give a separate award on the part that has been admitted;
- (f) in the event a settlement is made, the Council may at the request of the parties, confirm such settlement in the award.
- (g) a correction, change or interpretation of the award may be given effect to in the following circumstances, provided that the relevant parties to the arbitration have been presented an opportunity to express their views:
 - (i) any obvious miscalculation or clerical error in an award shall be corrected by the arbitrator;
 - (ii) the arbitrator may decide a question which should have been decided in the award but which was not decided therein, in the event that a party to the arbitration requests for the same within thirty (30) days of the award;
 - (iii) the arbitrator may provide an interpretation of the award in writing provided that the same is requested for by a party to the arbitration within thirty (30) days of the award;

24. An arbitral award by the Council of the PCCSL is equivalent to an award by an arbitral tribunal under the Arbitration Act No. 11 of 1995. As such, an arbitral award by the Council may be enforced in terms of the Arbitration Act No. 11 of 1995, by applying to the High Court within one (1) year following the expiry of fourteen days from the date of the award.

25. The fee and costs of arbitration shall be decided by the Council and the Council shall prescribe how and by whom such fees and costs shall be paid.

26. Once arbitration proceedings close, the arbitrator shall submit to the PCCSL, a copy of the award as well as a record of all proceedings.

F. MAINTENANCE OF RECORDS

27. The CEO shall maintain records of all complaints including telephonic and verbal communications relating thereto and decisions of conciliation, mediation and arbitration proceedings, and shall make available to the PCCSL an annual report of the complaints made, adjudicated and pending, which will be made available to the public thereafter by way of a publication by the PCCSL.

G. NOTICES

28. Any document, addressed to the PCCSL and sent by courier or by registered post shall be deemed to be given, made or received by the PCCSL on the day it was so delivered or on the day following that on which it is posted as the case may be.
29. The spokesperson for all complaints received and decisions made by the Council will be the CEO, provided however that the CEO may consult the chairman of the Council where it is prudent to do so. In any event no details will be provided to the press and/or electronic media and/or public regarding on-going inquiries, and no interpretation of any arbitral awards made by the Council will be made by the CEO unless after consultation with the chairman of the Council and/or arbitrator.
30. All press releases and verbal statements on matters relating to the PCCSL, made to the public and/or other media, by the CEO will require the prior sanction of the chairman of the PCCSL provided that if they relate to any matter involving a complaint, the provisions of clause 29 shall apply.

H. REVISION OF RULES

31. These procedures will be reviewed annually or as and when required and if necessary revised and submitted by the CEO to the Council for approval and to the Board of Directors of PCCSL for ratification and implementation.

End/WSR – August 28, 2012