

Know Your Rights: Seeking Redress Against Decisions of the Ministry or MCMC Under CMA 1998



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The telecommunications and technology industry in Malaysia is regulated by the Ministry of Communications and Multimedia and the Malaysian Communications and Multimedia Commission (**MCMC**). To effectively undertake their role, the Minister and the MCMC are vested with wide powers to make decisions and implement policies under the Communications and Multimedia Act 1998 (**CMA**).

However, licensees under the CMA who are aggrieved by a decision or direction of the Minister or the MCMC are not left without avenues to seek redress. The CMA prescribes three primary methods through which a licensee may seek redress against an adverse decision as follows.

(1) Section 119 — Review by the MCMC

This form of redress, while couched as a form of “review” under the CMA, effectively serves to provide preliminary transparency regarding the reasons and considerations that influenced the MCMC’s final decision. The section states that licensees who are aggrieved, or otherwise adversely affected by a decision of the MCMC, may write in to the MCMC requesting a statement for the reasons of the decision in question. A “decision” in this context encompasses any action, order, report or delegated authority made by the MCMC pursuant to the performance of the powers granted to it under the CMA.

A copy of a statement of reasons for the decision will then be provided by the MCMC within 30 days from the date of receipt of the written request. Licensees can also expect to be informed of any relevant information taken into account in making the decision. The MCMC is, however, not obliged to publish the said statement of reasons if such publication or disclosure would: (a) disclose a matter of a confidential character; (b) be likely to prejudice the fair trial of a person; or (c) involve the unreasonable disclosure of personal information about any individual (including a deceased person).

(2) Section 120 — Review by the Appeal Tribunal

Once the licensee has obtained and reviewed the statement of reasons by the MCMC under s 119, it may opt to lodge an appeal to the Appeal Tribunal for a review of the decision or direction of the MCMC. It should be noted there are distinctions between decisions and directions, both of which



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are open to review by the Appeal Tribunal, as opposed to “determinations”, which are not:

- (i) **Decisions** — The resolution of a disputed matter or the pursuance of a particular course of action, i.e. decisions on disputed matters, or deciding to hold public inquiries.
- (ii) **Directions** — Requiring a person to do, or refrain from doing something.
- (iii) **Determinations** — The prescription of regulations or guidelines, or clarification pertaining to certain matters, e.g. determining the listing of all facilities and services available to licensees.

The decision of the Appeal Tribunal is final and binding on the parties.

(3) Section 121 — Judicial review

Finally, judicial review is yet another process prescribed in the CMA by which the decisions of the Minister or the MCMC may be open to challenge by licensees. Judicial review is a remedy of last resort and is generally only available where all alternative avenues of challenge or appeal provided for in the Act have been exhausted, e.g. by appeal to the Appeal Tribunal. In brief, judicial review operates as a “check and balance” mechanism by which the legality of any decisions or actions by public bodies may be determined by a court of law. There are three principal grounds upon which an application for judicial review may be made:

- (i) **Illegality** — Where a public authority acts beyond the scope of powers which are prescribed for it under a statutory regime.
- (ii) **Unreasonableness** — Where a decision is so “outrageous in its defiance of logic or accepted moral standards” that no sensible person would have arrived at the same decision. This is also known as “Wednesbury unreasonableness”, and is a particularly difficult threshold to meet.
- (iii) **Procedural impropriety** — Where a lack of adherence to proper procedural steps provided for in a statutory instrument results in a breach of natural justice.

Licensees may seek redress by promptly filing an application for judicial review within three months from the date when the grounds of application first arose; or when the decision was first communicated to the applicant.

In the event that the application is made after this three-month timeframe, it is possible to apply for an extension of time. However, the courts will only allow an extension where it is satisfied there are “good reasons” for doing so. The question as to what constitutes a “good reason” for an extension is largely a question of fact — which turns on the particular circumstances of a matter.

Conclusion

Licensees would be well-advised to be conscious of their rights under these provisions in the CMA, and seek legal advice on the most appropriate recourse in the event they are aggrieved by an adverse decision or direction of the Minister or the MCMC.

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