

Brunei Darussalam Domain Name Dispute Resolution Policy (BDRP)

1. PURPOSE

- a. This Brunei Darussalam Domain Name Dispute Resolution Policy (the “Policy”) has been adopted by the Brunei Darussalam Network Information Centre (“BNNIC”) as the registration authority for the Brunei country-code top level domain (“Brunei ccTLD”).
- b. This Policy is incorporated by reference into the Domain Name Registrant Agreement between BNNIC and the registrant or the domain name holder of a “.bn” domain name (the “Registrant”), and sets out the terms and conditions governing how a dispute between the Registrant and any party other than BNNIC over the registration and use of the Registrant’s “.bn” domain name are to be resolved.
- c. Any party who wishes to rely on this Policy, or who participates in an administrative proceeding under Paragraph 4 of this Policy, must abide by the terms of this Policy.
- d. Administrative proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for the Brunei Darussalam Domain Name Dispute Resolution Policy (the “Rules”) and the Supplemental Rules for the Brunei Darussalam Domain Name Dispute Resolution Policy (the “Supplemental Rules”) issued by the *Kuala Lumpur Regional Centre for Arbitration* (or equivalent) as the Secretariat established to provide the administrative dispute resolution service under this Policy.

2. THE REGISTRANT’S REPRESENTATIONS

By applying to register a domain name, or by asking BNNIC to maintain or renew a domain name registration, the Registrant represents and warrants to BNNIC that:

- a. the statements that the Registrant made in the Registrant’s Application Form for the registration of a domain name are complete and accurate;
- b. to the Registrant’s knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights (including without limitation, intellectual property rights) of any third party;
- c. the Registrant is not registering the domain name for an unlawful purpose; and
- d. the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.

It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights.

3. CANCELLATIONS, TRANSFERS AND CHANGES

- a. Under this Policy, BNNIC will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:
 - (i) Subject to the provisions of Paragraph 8, BNNIC's receipt of written or appropriate electronic instructions from the Registrant or the Registrant's authorized agent to take such action;
 - (ii) BNNIC's receipt of an order from a court in Brunei Darussalam requiring such action; and/or
 - (iii) BNNIC's receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which the Registrant was a part and which was conducted under this Policy or a later version of this Policy adopted by BNNIC. (See Paragraphs 4(i) and 4(k) below)
- b. BNNIC may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of the Registrant's Domain Name Registrant Agreement or other legal requirements.

4. MANDATORY ADMINISTRATIVE PROCEEDING

This Paragraph sets out the type of disputes for which the Registrant is required to submit to a mandatory proceeding. These proceedings will be conducted before an Administrative Panel appointed by the Secretariat to provide the administrative dispute resolution service under this Policy (the "Provider").

a. Applicable Disputes

The Registrant is required to submit to a mandatory administrative proceeding in the event that a third party (the "Complainant") asserts to the Provider, in compliance with the Rules, that:

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

In the administrative proceeding, the Complainant must prove that each of these three elements is present. If the Complainant proves that each of these three elements is present, the Complainant shall be entitled to the remedies set out in Paragraph 4(i).

b. Evidence of Registration or Use in Bad Faith

For the purposes of 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Administrative Panel to be present, shall be evidence of the registration or use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of the Complainant, for valuable consideration in excess of the Registrant's document out-of-pocket costs directly related to the domain name;
- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct;
- (iii) the Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line locations, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

c. How to Demonstrate the Registrant's Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint

When the Registrant receives a complaint, the Registrant should refer to Paragraph 5 of the Rules in determining how the Registrant's response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Administrative Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4(a)(ii):

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods and services;
- (ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or

- (iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

d. Initiation of Administrative Proceeding and Process and Appointment of Administrative Panel

The Rules state the process for initiating and conducting an administrative proceeding and for appointing the panel that will decide the dispute (the “Administrative Panel”).

e. Choice of Procedure

The Complainant and the Registrant will be invited to consider whether they wish to have the dispute mediated by the Administrative Panel before the Administrative Panel is called upon to decide the dispute.

- (i) If both the Complainant and the Registrant agree to have the dispute mediated by the Administrative Panel before the Administrative Panel is called upon to decide the dispute, the Administrative Panel will facilitate discussions between the parties to help them resolve the dispute amicably.
- (ii) If either the Complainant or Registrant does not wish to have the dispute mediated by the Administrative Panel, the dispute will not be mediated and the Administrative Panel will decide the dispute.
- (iii) If the parties agree on a settlement, whether as a result of mediation by the Administrative Panel or otherwise, and the parties consent to having the terms of settlement reflected in a decision of the Administrative Panel, the Administrative Panel shall render a decision that is consistent with the terms of the settlement and state that the decision is made pursuant to a settlement between the parties. If the parties agree on a settlement, whether as a result of mediation by the Administrative Panel or otherwise, but any party does not consent to having the terms of the settlement reflected in a decision of the Administrative Panel, the Administrative Panel (or, if the Administrative Panel has not been appointed yet, the Provider) shall terminate the administrative proceeding, such termination to be without prejudice to the initiation of another administrative proceeding in respect of the same matter.
- (iv) If the parties fail to reach an agreement after mediation by the Administrative Panel, and the parties do not agree that the dispute may be decided by Administrative Panel that mediated the dispute, the Administrative Panel shall terminate the administrative proceeding, such termination to be without prejudice to the initiation of another administrative proceeding in respect of the same matter, with a request that the Provider appoint a different Administrative Panel to decide the dispute. If the parties fail to reach an agreement after mediation by the Administrative Panel, but the parties agree that

the dispute may be decided by the Administrative Panel that mediated the dispute, the Administrative Panel shall proceed to decide the dispute.

f. Consolidation

In the event of multiple disputes between the Registrant and a Complainant, either the Registrant or the Complainant may apply to consolidate the disputes before a single Administrative Panel. This application shall be made to the Provider before the Provider appoints different Administrative Panels to hear different pending disputes between the parties. The Provider may consolidate any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy.

g. Fees

All fees (inclusive of tax) charged by the Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the Complainant, except in cases where the Registrant elects to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules, in which case all fees will be split evenly by the Registrant and the Complainant.

h. BNNIC's Involvement in Administrative Proceedings

BNNIC does not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, BNNIC will not be liable as a result of any decisions rendered by an Administrative Panel.

i. Remedies

The remedies available to a Complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of the Registrant's domain name or the transfer of the Registrant's domain name registration to the Complainant.

j. Notification and Publication

The Provider shall notify BNNIC of any decision made by an Administrative Panel with respect to a domain name that the Registrant has registered with BNNIC. All decisions under this Policy will be published in full over the Internet, except in cases where an Administrative Panel decides in an exceptional case to edit portions of its decision.

k. Availability of Court Proceedings

The mandatory administrative proceedings set forth in Paragraph 4 shall not prevent either the Registrant or the Complainant from submitting the dispute to a Brunei Darussalam court for independent resolution. However, the Registrant and the Complainant shall not commence any court proceedings in respect of the Registrant's domain name while an administrative proceeding is pending in respect of that domain name. If an Administrative Panel decides that the Registrant's domain name registration should be cancelled or transferred,

BNNIC will wait ten (10) working days after BNNIC is informed by the Provider of the Administrative Panel's decision before implementing the decision. BNNIC will then implement the decision unless BNNIC has received from the Registrant during that ten (10) working day period a sealed copy of a writ of summons or an originating summons showing that the Registrant has commenced a lawsuit against the Complainant in Brunei Darussalam in respect of the domain name. If BNNIC receives such documentation within the ten (10) working day period, BNNIC will not implement the Administrative Panel's decision, and BNNIC will take no further action, until BNNIC receives:

- (i) evidence satisfactory to BNNIC of a resolution between the parties;
- (ii) evidence satisfactory to BNNIC that the Registrant's lawsuit has been dismissed or withdrawn; or
- (iii) a copy of an order from a Brunei Darussalam court dismissing the Registrant's lawsuit or ordering that the Registrant does not have the right to continue to use the domain name.

I. Nature of Administrative Proceeding

For avoidance of doubt:

- (i) an administrative proceeding is not an arbitration but an alternative dispute resolution mechanism for resolving disputes over the registration and use of ".bn" domain names;
- (ii) the submission of a dispute to an administrative proceeding does not constitute a submission of the dispute to arbitration; and
- (iii) the Policy, the Rules and the Supplemental Rules do not constitute an arbitration agreement or procedural rules for arbitration.

5. ALL OTHER DISPUTES AND LITIGATION

All other disputes between the Registrant and any party other than BNNIC regarding the Registrant's domain name registration that are not brought pursuant to the mandatory administration proceeding provisions of Paragraph 4 shall be resolved between the Registrant and such other party through any court, arbitration or other proceedings that may be available.

6. BNNIC'S INVOLVEMENT IN DISPUTES

BNNIC will not participate in any way in any dispute between the Registrant and any party (other than BNNIC) regarding the registration and use of the Registrant's domain name. The Registrant shall not name BNNIC as a party or otherwise include BNNIC in any such proceeding. In the event that BNNIC is named as a party in any such proceeding, BNNIC reserves the right to raise any and all defences deemed appropriate, and to take any other action necessary to defend itself.

7. MAINTAINING THE STATUS QUO

BNNIC will not transfer, cancel, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

8. TRANSFERS DURING A DISPUTE

The Registrant shall not transfer a domain name registration to another holder:

- (i) during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) working days after such proceeding is concluded; or
- (ii) during a pending court proceeding or arbitration commenced regarding the domain name, unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or the arbitrator.

BNNIC reserves the right to cancel any transfer of a domain name registration to another holder that is made in violation of this paragraph.

9. POLICY MODIFICATIONS

BNNIC reserves the right to modify this Policy at any time. BNNIC will post its revised policy at [<http://www.bnnic.bn>] at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to the Provider, in which event the version of the Policy in effect at the time it was invoked will apply to the Registrant until the dispute is over, all such changes will be binding upon the Registrant with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of BNNIC's change. In the event that the Registrant objects to a change in this Policy, the Registrant's sole remedy is to cancel the Registrant's domain name registration with BNNIC, provided that the Registrant will not be entitled to a refund of any fees that the Registrant has paid to BNNIC. The revised Policy will apply to the Registrant until the Registrant cancels the Registrant's domain name registration.

10. SEVERABILITY

Any provision of this Policy which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Policy, all without affecting the remaining provisions of this Policy or affecting the validity or enforceability of such provision in any other jurisdiction.

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