

Domain Name Dispute Resolution Policy
for .hk and .香港 domain names

[Effective 22 Feb 2011]

1. Purpose

This Domain Name Dispute Resolution Policy (the “**DNDRP**”) is incorporated by reference into the agreement between the Registrant and the Registrar (the “**Registration Agreement**”) as part of the mandatory terms required by the Hong Kong Internet Registration Corporation Limited (“**HKIRC**”) in relation to the registration and use of a domain name in the .hk and .香港 country code top level domains (a “**Domain Name**”). This DNDRP sets forth the terms and conditions in connection with a dispute between the Registrant and any party other than HKIRC and the Registrar in regard to the registration and use of a Domain Name.

Proceedings under Paragraph 4 of this DNDRP will be conducted according to the [HKIRC Domain Name Dispute Resolution Policy Rules of Procedure](#) (the “**Rules of Procedure**”), and the selected Arbitration Dispute Resolution Service Provider’s Supplemental Rules (the “**Supplemental Rules**”).

2. Registrant’s Representations

By applying to register a Domain Name, or by asking the Registrar to maintain or renew a Domain Name registration, the Registrant represents and warrants to the Registrar and HKIRC that:

- (a) the statements that the Registrant made in the Registration Agreement or provided to the Registrar in the course of processing the Domain Name application are complete and accurate;
- (b) to the best of the Registrant’s knowledge and belief, the Domain Name the Registrant is applying for will not infringe or otherwise violate the legal rights of any third party;
- (c) the Registrant intends to use the Domain Name;
- (d) the Registrant’s use of the Domain Name shall be bona fide for the Registrant’s own benefit and shall be for lawful purposes;
- (e) the Registrant will not knowingly use the Domain Name in violation of any applicable laws and regulations;
- (f) all information the Registrant, or any agent of the Registrant provides to the Registrar and HKIRC, including further additions or alterations to such information, is complete and accurate; and
- (g) in the event that the Registrant receives notification of any claim, action or demand arising out of or related to the registration or use of the Domain Name, the Registrant will immediately send the Registrar a written notice notifying the Registrar of such claim, action or demand, and the Registrar shall notify HKIRC.

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

The Registrar or HKIRC may cancel, transfer or otherwise make changes to Domain Name registrations in the following circumstances:

- (a) the receipt of written or electronic instructions to the Registrar or HKIRC from both the Registrant and the other party to the dispute that the dispute has been settled; or
- (b) the receipt by the Registrar or HKIRC of an order issued by an HKSAR court requiring any such action; or
- (c) the receipt of a decision of an Arbitration Panel as defined in the [Rules of Procedure](#), requiring any such action in respect of the relevant Domain Name registration.

Notwithstanding anything in these DNDRP, the Registrar or HKIRC may also cancel, transfer or otherwise make changes to a Domain Name registration in accordance with the terms of the Registration Agreement or any legal requirements,

4. Mandatory Arbitration Proceedings

This Paragraph sets forth the type of disputes for which the Registrant is required to submit to a mandatory arbitration proceeding. These proceedings will be conducted before one of the Dispute Resolution Service Providers approved by HKIRC (each, a “**Provider**”).

- (a) **Applicable Disputes.** The Registrant is required to submit to a mandatory arbitration proceeding in the event that a third party (a “**Complainant**”) asserts to the applicable Provider, in compliance with the [Rules of Procedure](#) and the Supplemental Rules of such Provider, that:
- (i) the Registrant’s Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights; and
 - (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 and is being used in bad faith, and
 - (iv) if the Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

To succeed in the arbitration proceeding, the Complainant must prove that all of the above elements are present. For the purpose of requirement (i) in relation to Chinese Domain Names, the traditional or simplified form or any other variant set out in the Chinese Characters Variant Table (defined in the Registration Agreement) of a Chinese character appearing in a Domain Name or trade mark will be considered to be identical and confusingly similar to that Chinese character.

- (b) **Evidence of Registration and Use in Bad Faith.** For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

circumstances indicating that the Registrant has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name

- (i) registration to the Complainant who is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant’s documented out-of-pocket costs directly related to the Domain Name; or

- (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; or

- (iii) the Registrant has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

by using the Domain Name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s web site or other on-line location, by

- (iv) creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s web site or location or of a product or service on the Registrant’s web site or location.

- (c) **Evidence of Registration in violation of the eligibility requirements for .idv.hk/.個人.hk / .個人.香港 Domain Names (“Individual Domain Name Categories”)** For the purposes of Paragraph 4(a)(iv), the Registrant shall have violated the eligibility requirements for any Domain Name registered in the Individual Domain Name categories. These include the name incorporated in the Domain Name is not the Registrant’s legal name for 個人.hk and 個人.香港 domain names as set out in the Registration Agreement and the [Registration Policies, Procedures and Guidelines](#) and the Published Policies.

- (d) **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 as defined in Paragraph 3 of the **Rules of Procedure**, the Registrant should refer to Paragraph 5 of the **Rules of Procedure** in determining how the Registrant’s Response should be prepared.

Any of the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be proven based on its evaluation of all evidence presented to it, shall demonstrate the Registrant’s rights or legitimate interests to the Domain Name for 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 or services in Hong Kong; or

- (ii) the Registrant (as an individual, business, or other organisation) has been commonly known by the Domain Name, even if the Registrant has acquired no trade mark or service mark rights in Hong Kong; or
- (iii) the Registrant has trademark or service mark rights that the mark is identical to the Domain Name the Registrant is holding; or
- (iv) 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 trade mark or service mark at issue; or

- (v) If the Domain Name is registered in one of the Individual Domain Name Categories, the Domain Name registered must be the Registrant's own "individual name", which can be either (1) the Registrant's legal name, or (2) a name by which the Registrant is commonly known and can include, for example, a pseudonym the Registrant uses if the Registrant is an author or a painter, or a stage name if the Registrant is a singer or actor, or the name of a fictional character if the Registrant has created or can otherwise show it has rights in such fictional character.

- (e) **Selection of Provider.** The Complainant shall select the Provider from among those approved by the HKIRC by submitting the Complaint to that Provider. The selected Provider will administer the arbitration proceedings.

- (f) **Initiation of arbitration proceeding and process and appointment of Arbitration Panel.** [The Rules of Procedure](#) and the Provider's Supplemental Rules set out the process for initiating and conducting an arbitration proceeding and for appointing the Arbitration Panel which will decide the dispute.

- (g) **Fees.** All fees charged by a Provider in connection with any dispute before an Arbitration Panel pursuant to this DNDRP shall be paid by the Complainant, except in cases where the Registrant elects to expand the Arbitration Panel from one to three Panelists as provided in Paragraph 5(b)(iv) of the [Rules of Procedure](#) or in the Supplemental Rules, in which case all fees will be split evenly by the Registrant and the Complainant.

Attention is also drawn to Paragraph 18(d) of the [Rules of Procedure](#) which provides for the possible charge for extra fees in the exceptional circumstances, for example, if an in-person hearing is held.

- (h) **HKIRC's Involvement in Arbitration Proceedings.** The Registrar and HKIRC do not, and will not, participate in the administration or conduct of any proceeding before an Arbitration Panel. In addition, the Registrar and HKIRC will not be liable as a result of any decision rendered by an Arbitration Panel.

- (i) **Remedies.** The remedies available to a Complainant pursuant to any proceeding before an Arbitration 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. The Registrar shall execute the result. Where the Registrar does not execute the result without giving an acceptable reason, HKIRC shall execute the result of the dispute.

- (j) **Notification and Publication.** The Provider shall notify the Registrar and HKIRC of any decision made by an Arbitration Panel with respect to a Domain Name. All decisions under this DNDRP and the **Rules of Procedure** and the Provider's Supplemental Rules will be final and binding, and shall be published in full on the Internet or via other forms of publication, except when an Arbitration Panel determines, in an exceptional case, to redact portions of its decision.

By applying to register a Domain Name and by asking either HKIRC or the Registrar to register, maintain or renew a Domain Name registration, the Registrant agrees that a decision by an Arbitration Panel in which the Registrant is a Respondent may be made public and may be posted on the website of the Registrar and/or HKIRC and/or the Provider which appointed the Arbitration Panel in question.

- (k) **Results of an Arbitration Panel's Decision.** If an Arbitration Panel decides that the Registrant's Domain Name registration should be cancelled or transferred, the Registrar will wait ten (10) business days after the Registrar and HKIRC are informed by the applicable Provider of the Arbitration Panel's decision before implementing that decision. Where the Registrar does not execute the decision without giving a reason acceptable to HKIRC in its reasonable discretion, HKIRC shall execute the decision of the dispute.

- (l) **Domain Names in Pair.** Where a Domain Name is held in pair in accordance with Clause 5.2 of the [Registration Policies, Procedures and Guidelines](#) or pursuant to the Registration Agreement, both or all Domain Names held in the pair shall be subject to the decision of the Arbitration Panel, and shall

be cancelled and transferred together as a result of such decision.

5. The Involvement of HKIRC and/or the Registrar in Disputes

The Registrar and HKIRC will not participate in any way in any dispute between the Registrant and any party other than the Registrar and HKIRC regarding the registration and use of the Registrant's Domain Name. The Registrant shall not name the Registrar and/or HKIRC as a party or otherwise include the Registrar and/or HKIRC in any such proceeding. In the event that the Registrar or HKIRC is named as a party in any such proceeding, the Registrar and HKIRC reserve their right to raise any and all defences deemed appropriate by them, and to take any other action necessary to defend themselves.

6. Maintaining the Status Quo

Neither the Registrar nor HKIRC will cancel, transfer, activate, deactivate, or otherwise change the status of any Domain Name registration under this DNDRP except as provided in Paragraphs 3 above.

7. Transfers During a Dispute to a new registrant or Change of the Registrars

The Registrant shall not transfer its Domain Name registration to another holder (i) during a pending arbitration proceeding brought pursuant to Paragraph 4 or for a period of ten (10) business days after such proceeding is concluded; or (ii) during a pending arbitration proceeding, commenced regarding the Registrant's 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 Arbitration Panel. The Registrar and HKIRC reserve the right to cancel any transfer of a Domain Name registration to another holder that is made in violation of this paragraph.

The Registrant shall not transfer the Registrant's Domain Name registration to another registrar during a pending arbitration proceeding brought pursuant to Paragraph 4 and for a period of ten (10) business days after such proceeding is concluded. The Registrant may transfer administration of the relevant Domain Name registration to another registrar during a pending arbitration, provided that the original Registrar shall continue to be subject to the proceedings commenced against the Registrant in accordance with this DNDRP and the [Rules of Procedure](#). In the event that the Registrant transfers a Domain Name registration to another registrar during a pending arbitration, such dispute shall remain subject to the Registration Agreement of the Registrar from which the Domain Name registration was transferred, and the new registrar agrees to execute the decision rendered by the Arbitration Panel in respect of the relevant Domain Name registration.

8. Policy Modifications

This DNDRP and the [Rules of Procedure](#) may be modified by HKIRC at any time. Each time HKIRC amends this DNDRP and its [Rules of Procedure](#), HKIRC will publish the amended version of the DNDRP and/or the [Rules of Procedure](#) in advance (where practicable, fourteen (14) calendar days in advance) on the website of HKIRC www.hkirc.hk. Each amended version of the DNDRP and/or the [Rules of Procedure](#) will become binding and effective on the Registrant, the Registrar and HKIRC on the effective date specified at the top of the amended version, and will replace all previous versions of the DNDRP and/or the [Rules of Procedure](#). The Registrant should review the websites of the Registrar and/or HKIRC regularly in order to be aware of all such amendments.

If this DNDRP and/or its [Rules of Procedure](#) are invoked in the submission of a Complaint to a Provider, the version of the DNDRP and/or [Rules of Procedure](#) in effect at the time it was invoked will apply to that submission until the arbitration proceeding is over.

In the event that the Registrant objects to a change in this DNDRP and/or the [Rules of Procedure](#), the Registrant's sole remedy is to cancel the Registrant's Domain Name registration with the Registrar, provided that the Registrant will not be entitled to a refund of any fees the Registrant has paid to the Registrar. The DNDRP and the [Rules of Procedure](#), as modified, will apply to the Registrant until the Registrant cancels the relevant Domain Name registration.

9. Miscellaneous

In this DNDRP:

- (a) Words importing the singular number only shall include the plural and vice versa.
- (b) Words importing the masculine gender shall include the feminine gender and vice versa.