

## Dispute Resolution

### Dispute Resolution Policy

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Rules of Procedure

HKIAC Supplemental Rules

#### Second level and Commercial Third level eff. 30 Nov 2006

Individual Third level  
eff. 14 Dec 2006

#### Hong Kong Domain Name Registration Company Limited Domain Name Dispute Resolution Policy [Effective 30 November 2006]

#### 1. Purpose

This Domain Name Dispute Resolution Policy (the "**Dispute Resolution Policy**") has been adopted by the Hong Kong Domain Name Registration Company Limited ("**HKDNR**") and is incorporated by reference into your Domain Name Registration Agreement between HKDNR and you ("**Registration Agreement**"). This Dispute Resolution Policy sets forth the terms and conditions in connection with a dispute between you and any party other than the HKDNR in regard to the registration and use of a .hk Internet Domain Name (other than a .idv.hk or .個人.hk Domain Name) registered with us by you ("**Domain Name**"). Disputes in relation to .idv.hk and .個人.hk domain names are governed by the [HKDNR Dispute Resolution Policy Individual Domain Names](#).

Proceedings under Paragraph 4 of this Dispute Resolution Policy will be conducted according to the HKDNR Domain Name [Dispute Resolution Policy Rules of Procedure](#) (the "**Rules of Procedure**"), see Appendix A and the selected [Arbitration Dispute Resolution Service Provider's Supplemental Rules](#) ("**the Supplemental Rules**").

#### 2. Your Representations

By applying to register a Domain Name, or by asking us to maintain or renew a Domain Name registration, you represent and warrant to us that:

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

It is your responsibility to determine whether your Domain Name registration infringes or violates someone else's rights.

#### 3. Cancellations, Transfers and Changes

We will cancel, transfer or otherwise make changes to Domain Names in accordance with clauses 11 and 12.1 of the Registration Agreement.

#### 4. Mandatory Arbitration Proceeding

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

a. Applicable Disputes. You are 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) your Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights; and
- (ii) you have no rights or legitimate interests in respect of the Domain Name; and
- (iii) your Domain Name has been registered and is being used in bad faith.

*To succeed in the arbitration proceeding, the Complainant must prove that all of these three 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 Domain Name 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:

- (i) circumstances indicating that you have registered or you have acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name 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 your documented out-of-pocket costs directly related to the Domain Name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

**c. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint.**

When you receive a Complaint as defined in Paragraph 3 of the Rules of Procedure, you should refer to Paragraph 5 of the Rules of Procedure in determining how your 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 your rights or legitimate interests to the Domain Name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organisation) have been commonly known by the Domain Name, even if you have acquired no trade mark or service mark rights in Hong Kong; or
- (iii) you are 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.

**d. Selection of Provider.** The Complainant shall select the Provider from among those approved by the HKDNR by submitting the Complaint to that Provider. The selected Provider will administer the arbitration proceedings.

**e. Initiation of arbitration proceeding and process and appointment of Arbitration Panel.**

The Rules of Procedure and the Provider's Supplementary Rules set out the process for initiating and conducting an arbitration proceeding and for appointing the Arbitration Panel, which will decide the dispute.

**f. Fees.** All fees charged by a Provider in connection with any dispute before an Arbitration Panel pursuant to this Dispute Resolution Policy shall be paid by the Complainant, except in cases where you elect to expand the Arbitration Panel from one to three Panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure and in the Provider's Supplemental Rules, in which case all fees will be split evenly by you 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.

**g. Our Involvement in Arbitration Proceedings.** We do not, and will not, participate in the administration or conduct of any proceeding before an Arbitration Panel. In addition, we will not be liable as a result of any decisions rendered by an Arbitration Panel.

**h. Remedies.** The remedies available to a Complainant pursuant to any proceeding before an Arbitration Panel shall be limited to requiring the cancellation of your Domain Name or the transfer of your Domain Name registration to the Complainant.

**i. Notification and Publication.** The Provider shall notify us of any decision made by an Arbitration Panel with respect to a Domain Name you have registered with us. All decisions under this Dispute Resolution Policy, the Rules of Procedure and the Provider's Supplemental Rules will be final and binding and including without limitation publication in full on the Internet or 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 us to register, maintain or renew a Domain Name registration, you agree that a decision by an Arbitration Panel in which you are a Respondent may be made public and may be posted on the website of the HKDNR and or the Provider which appointed the Arbitration Panel in question.

**j. Results of an Arbitration Panel's Decision.**

If an Arbitration Panel decides that your Domain Name registration should be cancelled or transferred, we will wait ten (10) business days after we are informed by the applicable Provider of the Arbitration Panel's decision before implementing that decision.

**5. Our Involvement in Disputes**

We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your Domain Name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defences deemed appropriate, and to take any other action necessary to defend ourselves.

**6. Maintaining the Status Quo**

We will not cancel, transfer, activate, deactivate, or otherwise change the status of any Domain Name registration under this Dispute Resolution Policy except as provided in Paragraphs 3 and 4 above.

**7. Transfers During a Dispute to a new holder**

You may not transfer your 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 your 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. We reserve the right to cancel any transfer of a Domain Name registration to another holder that is made in violation of this subparagraph.

**8. Policy Modifications**

We reserve the right to amend this Dispute Resolution Policy at any time. Each time we amend the Dispute Resolution Policy we will publish the amended version of the Dispute Resolution Policy in advance (where practicable, 14 calendar days in advance) on our web site: <http://www.hkdnr.hk>. Each amended version of the Dispute Resolution Policy will become binding and effective on you and us on the effective date specified at the top of the amended version, and will replace all previous versions of the Dispute Resolution Policy. You should review our web site regularly in order to be aware of all such amendments.

If this Dispute Resolution Policy has been invoked in the submission of a Complaint to a Provider, the version of the Dispute Resolution Policy in effect at the time it was invoked will apply to that submission until the arbitration proceeding is over.

In the event that you object to a change in this Dispute Resolution Policy, your sole remedy is to cancel your Domain Name registration with us, provided that you will not be entitled to a refund of any fees you paid to us. The Dispute Resolution Policy, as modified, will apply to you until you cancel your Domain Name registration.

#### **9. Miscellaneous**

In this Dispute Resolution Policy:

- (a) Words importing the singular number only shall include the plural and the converse shall also apply.
- (b) Words importing the masculine gender shall include the feminine gender and the converse shall also apply.



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