

ANNEXURE A

DOMAIN NAME (.BW) DISPUTE RESOLUTION PROCEDURE

1. PURPOSE

1.1. The purpose of this Dispute Resolution Procedure is to outline the proceedings to be followed when handling a dispute involving domain name(s) to ensure a fair and timely resolution.

2. RESPONSIBILITIES

1.2. Mediation Procedure: The Authority, Complainant(s), and Respondent(s) Responsibilities

2.1.1. As per the CRA Act, dispute mediation proceedings shall take a maximum of sixty (60) days to be completed.

2.1.2. The Authority's Responsibilities

2.1.2.1. The Authority shall:

- a. Encourage discussions between the Complainant and Respondent before intervention;
- b. Form a Panel upon the receipt of the complaint depending on the nature of the dispute;
- c. Submit the file(s) except for documents relating to mediation to the Panel as soon as the Panel is appointed;
- d. Ensure that the complaint complies with the Policy and this Procedure and, if so, the Authority shall forward it to the Respondent together with the Authority's explanatory coversheet within five (5) working days of the Authority receipt of the complaint;
- e. Promptly notify the Complainant of the deficiencies identified, if any. The Complainant shall have five (5) working days from receipt of notification within which to correct the deficiencies and return the complaint to the Authority, failing which the

Authority shall deem the complaint to be withdrawn. This shall not prevent the Complainant from submitting a different complaint to the Authority;

- f. Send a complaint to the Respondent using formal communication (in Paragraph 2.1.6.1.) to the contact details shown in the Registry database;
- g. Within five (5) working days following the Authority receipt of the response, forward the response to the Complainant;
- h. On the earliest date upon receipt of the Respondent's response, notify the Parties of the date of commencement of dispute mediation proceedings;
- i. Advise the Complainant to seek further redress with the Court in the event the Respondent does not file the response;
- j. Complete the notification and/or communication process to both Parties and commence the dispute mediation proceedings within five (5) working days;
- k. Terminate proceedings if both the Complainant and Respondent reach consensus during the five (5) days period of the mediation process;
- l. After completion of the dispute mediation proceedings, communicate the Panel's decision or resolution to both Parties;
- m. Implement the Panel's recommendation(s) upon approval by the Chief Executive on the affected domain name(s) within five (5) working day period, where and/or when necessary;
- n. If within the five (5) business day period the Authority receives documentation on the Court resolutions, the Administrative Panel's decision will take no further action until the Authority receives:
 - i. Evidence satisfactory to the Authority of a resolution between the Parties;
 - ii. Evidence satisfactory to the Authority that your lawsuit has been dismissed or withdrawn; or

- iii. A copy of an order from such Court dismissing your lawsuit or ordering that the Complainant does not have the right to continue to use the Respondents domain name(s);
- iv. Temporarily suspend the Panel's decision if a communication is received, within five (5) working days before implementation period, from the aggrieved Party stating their rights to appeal.

2.1.3. The Complainant(s) Responsibilities

- 2.1.3.1. Any person or entity shall submit a complaint and attach a signed conclusion as in Annexure A1 to the Authority in accordance with this Policy and Procedure.
- 2.1.3.2. The Complainant can opt to demonstrate their rights through a Court instead of the Authority.
- 2.1.3.3. The complaint may relate to more than one domain name, provided that the domain name(s) are registered in the Respondent's name.
- 2.1.3.4. More than one person or entity may jointly make a complaint. When this occurs, the joint Complainants shall:
 - a. All sign the hard copy of the complaint (or have it signed on their behalf);
 - b. Specify the 'lead Complainant' and a point of contact henceforth; and
 - c. The Complainant shall:
 - i. Send the complaint to the Authority in both hard and soft copy (by electronic means) and (except to the extent not available for attachments) in electronic form;
 - ii. Specify whether to be contacted directly or through an authorised representative. In the case that an authorised representative should be contacted, the contact details should be provided, e.g., E-mail Address, Telephone

Number, Fax Number and Postal Address which should be used;

- iii. Share with the Authority any of the Respondent's contact details which are known to the Complainant;
- iv. Describe in detail the grounds of the dispute lodged with the Authority;
- v. Specify the nature of the dispute, in the event the dispute is about domain name(s), the Complainant shall indicate whether the domain name(s) must be transferred, suspended, cancelled, or otherwise amended;
- vi. Specify the domain name(s) which are the subject of the dispute and the name(s) or mark(s) which are identical or similar to the domain name(s) and in which the Complainant asserts it has Rights;
- vii. Indicate to the Authority whether there are any undertakings of the legal proceedings regarding the nature of the dispute;
- viii. Attach to the complaint three (3) copies of any documentary or evidence regarding the dispute of the use of the name(s) or trademark(s); and
- ix. Within five (5) working days of receiving the response from the Respondent through the Authority, submit a consent to the Authority.

2.1.3.5. If the Complainant is found on three (3) separate occasions within a two (2) year period to have brought a complaint in bad faith, the Authority Shall not accept any further complaints from that Complainant for a period of two (2) years.

2.1.4. The Respondent(s) Responsibilities

2.1.4.1. The Respondent shall:

- a. Submit a response to the Authority within five (5) working days upon receipt of the complaint and attach a signed conclusion as in Annexure A2;
- b. Specify whether to be contacted directly or through an authorised representative. In the case that an authorised representative should be contacted, their contact details should be provided, e.g., E-mail Address, Telephone Number, Fax Number and Postal Address which should be used;
- c. Indicate to the Authority whether there are any undertakings of legal proceedings regarding the dispute;
- d. Attach to the response three copies of any documentary or evidence regarding the dispute of the use of the name(s) or trademark(s).

2.1.5. General Responsibilities: The Authority, Complainant(s), and Respondent(s) Responsibilities

2.1.5.1. This paragraph sets forth general responsibilities of the Authority, Complainant(s), and Respondent(s).

2.1.5.2. Communication

- a. All communication (through Fax, Post, Electronic Mail (hereafter Email) and Hand Delivery) shall be filed, stamped and be in English language only.
- b. All Email communications shall be sent in plain text as far as this is practical except as otherwise provided in this Procedure or as decided by the Authority.
- c. The Authority through its Panel shall communicate all information relating to a dispute at hand to all Parties.
- d. Any agreement reached through the mediation shall be in writing or electronic form to be enforceable.
- e. Under the Dispute Resolution Policy and Procedure, if:

- i. Either Party wishes to change its contact details it shall notify the Authority of all changes; and
- ii. The Authority wishes to change its contact details it shall notify all Parties.

2.1.6. Confidentiality

- 2.1.6.1. Negotiations conducted between the Parties during mediation shall be confidential.
- 2.1.6.2. Any information obtained during the mediation process, or any agreement or settlement reached shall be confidential unless the Parties specifically agree or Court orders otherwise.

2.1.7. Appeal

- 2.1.7.1. Each Party has the right to appeal and shall notify the Authority in writing before the initiation of the legal proceedings.
- 2.1.7.2. No Party shall be allowed to contact the Authority and its employees to reveal information or to be a witness as a result of any mediation under this Procedure unless Court has ordered such disclosure.
- 2.1.7.3. Neither the Authority nor any Party may reveal details of such negotiations to any third Parties unless the Authority resolves the dispute through a third Party, or Court orders disclosure.
- 2.1.7.4. Neither Party shall use any information gained in this dispute mediation nor for any later dispute or litigation.

Annexure A1

The complaint shall conclude with the following statement followed by the signature of the Complainant or its authorised representative:

"The Complainant agrees that its claims and remedies concerning the registration of the Domain Name, the dispute, or the dispute's resolution shall be solely against the Respondent and that neither the Authority its directors, officers, employees nor any Panel shall be liable for anything done or omitted in connection with any proceedings under the Dispute Resolution Procedure unless the act or omission is shown to have been in bad faith.";

"The information contained in this complaint is to the best of the Complainant's knowledge true and complete. This complaint is not being presented in bad faith and the matters stated in this complaint comply with the Procedure and applicable law."; and

"If the Panel orders a transfer of the domain name(s) then I agree to be bound by the Authority's Terms and Conditions for the Registration of Domain Names, and in particular the provisions relating to the Authority's processing of personal data."

Complainant's Name.....

Address.....

Signature.....Date.....

Annexure A2

The response shall conclude with the following statement followed by the signature of the Respondent or its authorised representative:

"The information contained in this response is to the best of the Respondent's knowledge true and complete and the matters stated in this response comply with the Procedure and applicable law."

Respondent's Name.....

Address.....

Signature.....*Date*.....