

BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY

DOMAIN NAME (.BW) DISPUTE RESOLUTION POLICY

Domain Name (.BW) Dispute Resolution Policy	Review Version	02
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Definitions

In this Policy, any word or expression to which a meaning has been assigned in the Communications Regulatory Act, 2012, shall have the same meaning, unless the context otherwise indicates:

“Abusive Registration”

means domain name(s) which were either registered, acquired, or used in a manner which, at the time when the registration or acquisition took place, there was an unfair advantage of or was detrimental to the Complainant’s Rights;

“Administrative Panel”

means a panel of experts appointed at the discretion of the Authority to facilitate the dispute resolution process as per the Dispute Resolution Policy and Procedure;

“Authority”

means Botswana Communications Regulatory Authority;

“.BW”

means Botswana’s country code top-level-domain name;

“Complaint”

means an expression of grievance or dissatisfaction concerning the use of .bw domain name(s);

“Complainant”

means the person (including a legal person) who asserts to the Authority, elements set out in paragraph 6.2 of this Policy, and according to the Procedure, or if there are multiple complainants, the ‘lead complainant’ (see Procedure paragraph 2.1.3);

“Contract”

means the contract between the Authority and the Respondent, made up of the Authority Terms and Conditions, and relevant .bw domain policies and this Policy;

“Court”

means any Court of competent jurisdiction in Botswana;

“Day”

means unless otherwise stated any day other than Saturday, Sunday, or public holiday in the Republic of Botswana;

“Decision”

means the verdict reached by the Authority concerning a dispute;

“Dispute”

means a disagreement or argument over domain name(s);

“Domain Name(s)”

means domain name(s) registered in any sub-domain of the .bw domain and are the subject of dispute between the Parties according to this Policy;

“Mediation”

means a process of dispute resolution which the Authority conducts through the panel to facilitate an acceptable resolution to the dispute between parties;

“Party”

means either the Complainant or Respondent. Parties has a corresponding meaning;

“Policy”

means Domain Name (.BW) Dispute Resolution Policy;

“Procedure”

means Annexure A of this Policy;

“Registrant”

means the individual, entity, or the authorised agent for the individual or entity who applied for or caused to be applied for a domain and whose

registration application has been processed and accepted by the
REGISTRY;

“Registry”

means the entity mandated by BOCRA to maintain and administer the .bw
ccTLD;

“Respondent”

means the person (including a legal person) in whose name or on whose
behalf a domain name(s) is registered and against whom the
Complainant makes a complaint;

“Rights”

means rights enforceable under the Botswana law. However, a
Complainant shall be unable to rely on rights in a name or term which is
descriptive of the Complainant's business;

“Third Party”

means a person, group, or entity other than the Authority, it's employees
or Administrative Panel involved in a dispute.

Abbreviation Of Terms

BOCRA	Botswana Communications Regulatory Authority
ccTLD	Country Code Top Level domain
CRA Act	Communication Regulatory Authority Act
DRP	Domain Name (.BW) Dispute Resolution Policy
ICANN	Internet Corporation for Assigned Names and Numbers
ITU	International Telecommunication Union
SRS	Shared Registry System

Disclaimer

Note that all disputes regarding .bw domain names shall be governed by the Laws of the Republic of Botswana.

1. Introduction

1.1. Botswana Communications Regulatory Authority (hereinafter, BOCRA or the Authority) is mandated by the Communications Regulatory Authority Act of 2012 (hereinafter, the Act) in Section 38 to establish and maintain a non-discriminatory and efficient and robust domain name system. Furthermore, the Authority is mandated to resolve disputes as provided for in the CRA Act of 2012 Sections 78 and 79, and CRA Regulations of 2022 Section 88 to ensure fair disputes resolution.

1.2. In pursuit of this mandate, the Authority continually reviews policies to expedite the process of resolving domain name disputes. This is undertaken by aligning with best practices, technology trends and policies from institutions like Internet Corporation for Assigned Names and Numbers (ICANN) through its Uniform Domain Name Dispute Resolution Policy, and the International Telecommunication Union (ITU).

1.3. This Policy provides the mediation processes on issues surrounding .bw domain name(s), through the Administrative Panel(hereinafter Panel) in accordance with the attached Dispute Resolution Procedure in Annexure A.

2. Purpose

2.1. The purpose of the Dispute Resolution Policy is to provide a swift alternative to litigation for the resolution of disputes that may arise in the domain name administration.

3. Terms And Conditions

3.1. This paragraph sets forth Terms and Conditions that shall apply where there is:

- 3.1.1. New registration of .bw domain name(s);
- 3.1.2. Maintenance of existing .bw domain name(s); and
- 3.1.3. Renewal of .bw domain name(s).

3.2. The Registrant hereby represents and warrants to the Authority that:

- 3.2.1. The statements made in their Registration Agreement are complete and accurate;
- 3.2.2. To the best of their knowledge, the registration or renewal of the domain name(s) shall not infringe upon or otherwise violate the rights of any Third Party;
- 3.2.3. They are not registering or renewing the domain name(s) for an unlawful purpose; and
- 3.2.4. They shall not knowingly use the domain name(s) in violation of any applicable Laws or Regulations of Botswana. It is the Registrant's responsibility to ensure that the domain name(s) registration does not infringe or violate someone else's rights.

4. Constitution of The Administrative Panel

4.1. The Authority shall appoint a Panel of expert(s) to initiate and conduct a mediation proceeding such that upon the receipt of a complaint, the appointed Panel will convene depending on the nature of the dispute.

The appointment of the Panel shall be based on relevant qualifications and experience. It shall consist of:

- 4.1.1. The chairman of the Panel who shall be elected by Panel members;
- 4.1.2. One member from Companies and Intellectual Property Authority;
- 4.1.3. An Attorney (dealing with Information Communications Technology and Telecommunications issues);
- 4.1.4. Technical expert(s) from the relevant industry; and
- 4.1.5. The Authority as the Secretariat.

4.2. The Panel members shall serve for a period of five (5) years except for the technical experts who shall be appointed on ad hoc basis. The Panel shall be given a sitting allowance as determined by the Authority from time to time. The Authority shall further avail a budget to cater for expenses of the panel in the execution of their mandate.

4.3. The Panel shall be impartial and independent and declare conflict of interest before accepting the appointment. However, if the Authority uncovers any conflict of interest, such member shall recuse him/herself and such recusal duly noted. The Authority shall then have the discretion to appoint a substitute member to the Panel.

4.4. Panel's Obligations

4.4.1. Communication

4.4.1.1. A Party and the Panel shall not communicate directly. All communication between a Party and the Panel shall be made through the Authority.

4.4.2. Powers of the Panel

4.4.2.1. The Panel shall:

- a. Determine and consider the admissibility, relevance, materiality, and weight of the evidence.
- b. In exceptional cases request for extension (e.g., in the case of requesting further statements or documents from the Parties) beyond the ten (10) working days period under this Policy from the Authority.
- c. Make recommendations to the Chief Executive on its ruling for domain name(s) cancellation and transfer (i.e., changes to the domain name(s) registration status) pursuant to this Policy.

5. Applicable Types of Disputes

5.1. This section sets forth the applicable disputes to undergo the mediation process facilitated by the Panel. That is If:

- 5.1.1. The domain name(s) are identical or confusingly similar to trademark(s) or service mark(s) in which the Complainant has rights;

- 5.1.2. Either Parties have no rights or legitimate interests in respect of the domain name(s);
- 5.1.3. The domain name(s) have been registered or is being used in bad faith; or
- 5.1.4. Either party have any other grievances regarding the domain name(s).

5.2. Evidence of Registration and Use in Bad Faith

- 5.2.1. For the purposes of Paragraph 5.1.3., the following circumstances shall be evidence of registration and use of domain names in bad faith, but not limited to the following:
 - 5.2.1.1. Selling, renting, or otherwise transferring the domain name(s) registration to the owner (i.e., the Complainant) of the trademark(s) or service mark(s) or to a competitor of the owner;
 - 5.2.1.2. Preventing the owner of the trademark(s) or service mark(s) from using the domain name(s);
 - 5.2.1.3. Disrupting the business of a competitor; and
 - 5.2.1.4. Attracting, for commercial gain, clients of the owner of the trademark.

6. Cancellations, Transfers And Changes

- 6.1. The Authority shall not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name(s) registration during the dispute mediation proceeding, except upon the receipt of a:

- 6.1.1. Hard copy or appropriate electronic instructions from either parties or their authorized agent to take such action to withdraw their interest in the domain name(s);
- 6.1.2. Court order requiring such action; and
- 6.1.3. Panel's recommendation(s), and approval thereof by the Chief Executive.

6.2. The Authority's Response to A Complaint

- 6.2.1. The following proceedings are to be undertaken by Parties who decide to demonstrate their rights and interests on the use of the domain name(s) by contacting the Authority in the event of a Complaint on the same.

- 6.2.1.1. If the Complainant decides to submit the complaint to the Authority, the same complaint cannot be submitted to a Court of competent jurisdiction until the administrative proceeding is concluded.

- 6.2.1.2. When a Complaint is submitted to the Authority, the Panel shall evaluate all evidence presented before it to allow the Parties to exercise and demonstrate their rights or legitimate interests to the use of domain name(s). For purposes of resolving the dispute, the Panel shall evaluate the following:

- a. The use of the domain name(s), or demonstrable preparations to use, is it in alignment with the bona fide offering of goods or services;

- b. Consider if the business(s), individual(s) and/or other organization(s) have been commonly known by the domain name(s), even no trademark(s) or service mark(s) rights have been acquired; and
- c. Consider the legitimate non-commercial or fair use of the domain name(s), without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

6.3. Right To Court Proceedings

6.3.1. This paragraph sets forth the rights for the Parties as follows:

6.3.1.1. If Parties decide to demonstrate their rights through Court:

- a. The Authority shall not be named or included as a party or otherwise in any such proceeding(s); and
- b. In the event that the Authority is named as a party in any such proceeding, the Authority reserves the right to raise all defences deemed appropriate, and to take any other action necessary to defend itself.

6.3.1.2. If Parties decide not to demonstrate their rights and interests on the use of domain name(s) through the Authority in pursuant to the provisions of the Act, then the disputes between Parties shall be resolved through any competent Court in Botswana, arbitration or other proceeding that may be available.

6.4. Notification and Publication

6.4.1. The Authority shall publish its decision on the Authority websites (<https://www.bocra.org.bw/> and <https://nic.net.bw/>) respectively in such manner that does not compromise the confidentiality of the parties involved, for bringing it to the attention of those likely to be affected by the decision.

7. Fees

7.1. The Authority does not charge for its mediation or administration services pursuant to this Policy. However, any administrative fees (sitting allowance) incurred when providing domain name(s) mediation services by the appointed experts in the Panel, shall be absorbed by the Authority. Notwithstanding the aforesaid, the Authority has the discretion to impose fees at a later stage.

7.2. All fees charged by a Third Party or the Court of Law in connection with any dispute pursuant to this Policy shall be paid by the complainant.

8. Modifications To The Policy And Procedure

8.1. This Domain Name (.BW) Dispute Resolution Policy repeals the Dispute Resolution Policy and Procedure of 2014. This policy shall be continually reviewed to align with technological evolution in the domain name space and/or the Laws of Botswana.

8.2. Each review will be conducted in consultation with Stakeholders and published on the Authority websites accordingly, i.e., <https://www.bocra.org.bw/> and <https://nic.net.bw/>.

8.3. This Policy shall bind the existing and future users of the (.bw) domain name space and Shared Registry Services and be read together with the existing .bw policies published on the following website <https://nic.net.bw/>.