

# CIDD

## CHANNEL ISLANDS DOMAIN DISPUTE

### Dispute Resolution Service Policy

#### 1. Definitions

**Abusive Registration** means a Domain Name which either:

i. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights;

or

ii. has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;

**Complainant** means a third party who asserts to Registry the of a complaint under this Policy and according to the Procedure,

**Complainant** means if there are multiple complainants, the 'lead complainant' who shall be responsible for the Submissions;

**Day** means unless otherwise stated any day other than Saturday, Sunday or any Bank or public holiday in England and Wales or the Channel islands;

**Decision** means the decision reached by an Adjudicator and where applicable includes the summary decision and decision of an appeal panel;

**Dispute Service or DS** means the service provided by Registry according to this Policy and the Procedure;

**Domain Name** means a domain name registered in any sub-domain of the .gg or .je domain space and which is the subject of dispute between the Parties according to this Policy and the Procedure;

**Adjudicator** means the Adjudicator we appoint under this Procedure;

**Informal Mediation** means impartial mediation which we conduct to facilitate a resolution acceptable to both Parties;

**Party** means a Complainant or Respondent and 'Parties' has a corresponding meaning;

**Procedure** means the procedure for the conduct of proceedings under the DS;

**Respondent** means the person (including a legal person) in whose name or on whose behalf a Domain Name is registered;

**Rights** means rights enforceable by the Complainant, under applicable law (whether under English law or Guernsey law or otherwise as determined by the DS), and may include rights in descriptive terms which have acquired a secondary meaning in exceptional circumstances;

we means the Registry and ‘us’ and ‘our’ have corresponding meanings.

## **2. Dispute Resolution Service**

A Respondent must submit to proceedings under the CIDD if a Complainant asserts to us, according to the Procedure, that:<sup>{SEP}</sup>

### **2.1. Identical or Similar Rights are Infringed**

2.1.1. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name;

and

2.1.2. The use of the Domain Name by the Respondent amounts to infringement of the Complainant’s rights.

The Complainant is required to prove to the Adjudicator that both elements are present on the balance of probabilities.

### **2.2<sup>{SEP}</sup> Abusive Registration.**

The Domain Name, in the hands of the Respondent, is an Abusive Registration.

### **2.3 Destabilising Use**

Circumstances indicating that the Domain Name in the hands of the Registrant or Respondent is used or appears likely to be used in a manner which objectively may materially (or materially risks) damage the reputation of the Channel Islands or any of them as a legitimate offshore financial centre.

### **2.4. Court Order<sup>{SEP}</sup>**

Court Order prevents registration or continued use.

### **2.5. Reserved name<sup>{SEP}</sup>**

The name is on the Registry’s reserved names list and therefore cannot be allocated.

## **3. Evidence of Abusive Registration**

A **non-exhaustive** list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:

### **3.1. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:**

3.1.1. for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly associated with acquiring or using the Domain Name;<sup>{SEP}</sup>OR

3.1.2. as a blocking registration against a name or mark in which the Complainant has Rights; {Note that a blocking registration is more than mere registration of a domain and the Complainant has to prove, on the balance of probability that the registrant intended to block

the Complainant from registration of the domain name by their action (i.e. a motive), this could be for example (non-exhaustively):

- (i) a previous course of dealings with the rights holder where the registrant became aware of the rights of the Complainant and where there is a prima-facie intent shown that the complainant that the registrant registered the domain as part of a dispute or other
- (ii) a previous course of dealings with the rights holder where the registrant became aware of the rights of the Complainant and where there is a prima-facie intent shown that the registrant threatened to damage the reputation of the complainant via the use of the domain name; or
- (iii) where the registrant is an ex-employee of the complainant or its licensee and where there is a prima-facie intent shown by the complainant that the registrant threatened to damage the reputation of the complainant via the use of the domain name or other action or dispute that indicates that the registration of the domain is improper.

OR

3.1.3. for the purpose of unfairly disrupting the business of the Complainant;<sup>[SEP]</sup>OR

3.1.4. for the purpose of improperly requiring the Complainant to license advertising or other linkage on the site.

### 3.2. Threatening to Confuse or Confusing Use<sup>[SEP]</sup>

Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which objectively has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant (and for these purposes the use of any statement on the website may be taken in to consideration);

(Note: It should be noted that caselaw indicates that registration and use of a domain name incorporating the right holder's marks for a protest site is not confusing use as any reasonable person looking at the protest site would not be confused as to origin and the right of free speech and freedom to peacefully protest is recognized in law. In respect of a domain such as [rightholder\_marks]protest.cctld or [rightholder\_marks]sucks.cctld is prima-facie legitimate and does not require usage to be shown).

### 3.3. Destabilising Use<sup>[SEP]</sup>

Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which objectively may materially damage the reputation or standing of the relevant Channel Islands in respect of its financial services sector or general stability (and for these purposes the use of any statement on the website may be taken in to consideration); (See note to 3.2)

### 3.4. Pattern of Abuse<sup>[SEP]</sup>

The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .gg or .je or otherwise) which

correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;

### 3.5. **False Details**<sup>[1]</sup><sub>[SEP]</sub>

It is independently verified that the Respondent has given false contact details to Registry; or

### 3.6. **Relationship registration**

The Domain Name was registered as a result of a relationship or intended relationship between the Complainant and the Respondent<sup>[1]</sup><sub>[SEP]</sub>and

The Complainant: <sup>[1]</sup><sub>[SEP]</sub>

(i) has been using the Domain Name registration exclusively; (save under written licence the circumstances or terms of which are indicative of retained ownership and use by the Respondent in the event of termination) and<sup>[1]</sup><sub>[SEP]</sub>

(ii) has paid (or where applicable reimbursed payment) (whether in money or other valuable consideration) for the registration and/or renewal of the Domain Name registration.

## **4. Demonstrate legitimate Registration**

A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is as follows:

### **4.1. Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under CIDD), the Respondent has:**

4.1.1. used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;

or

4.1.2. been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name for a significant period prior to Complaint and without notice of the existence of the Complainant and/or the Complainant's rights<sup>[1]</sup><sub>[SEP]</sub>or

4.1.3. made legitimate non-commercial or fair use of the Domain Name;

4.1.4. the Respondent has been known by a name reflective of the domain name for a significant time and without notice of the existence of the Complainant and/or the Complainant's rights or assertions in relation to the name and in the circumstances, the registration and use of the domain name at the date of filing of the Complaint (or where relevant at the date of first complaint by the Complainant) is reasonable;

(Reference may be made to social media)

4.2. **Generic Nature**<sup>[1]</sup><sub>[SEP]</sub>The Domain Name is generic or descriptive and the Respondent is making fair use of it (and the adjudication may consider a phonetic equivalence of a generic term);

4.3. **Written agreement**<sup>[1]</sup><sub>[SEP]</sub>The Respondent's holding of the Domain Name is consistent with

an express term of a written agreement entered into between the Complainant and Respondent;

4.4. **Acquiescence**<sup>[1]</sup>The Respondent took steps to make the Complainant aware of its use of the Domain Name in writing and the Complainant acquiesced in the use of the same for a material period of time.

## **5. Informal Mediation**

5.1. After we have received the Parties' submissions under the Procedure, we will initiate and conduct a period of Informal Mediation.

5.2. Negotiations conducted between the Parties during Informal Mediation (including any information obtained from or in connection to negotiations) shall be confidential, that is they will not be shown to the Adjudicator. Neither we nor any Party may reveal details of such negotiations to any third parties unless a court of competent jurisdiction orders disclosure, or we or either Party are required to do so by applicable laws or regulations. Neither Party shall use any information gained during mediation for any ulterior or collateral purpose or include it in any submission likely to be seen by any Adjudicator, judge or arbitrator in this dispute or any later dispute or litigation. c. If the Parties reach a settlement during Informal Mediation then the existence, nature and terms of the settlement shall be confidential, unless the Parties specifically agree otherwise or a court of competent jurisdiction orders otherwise. d. No binding verbal agreements can be reached as part of the Informal Mediation: any settlement reached by the Parties must be in writing or similar electronic form to be enforceable. e. If the Parties do not achieve an acceptable resolution through Informal Mediation within ten (10) Days, we will send notice to the Parties that we will appoint an Adjudicator when the Complainant has paid the applicable fees set out under paragraph 21(a) within the time limit specified in paragraph 21(d).

5.3. On appointment of an Adjudicator we will tell the Adjudicator whether or not Informal Mediation occurred, but we will not tell the Adjudicator what happened during Informal Mediation or why it failed to resolve the dispute.

5.4. No Party may ask us (including our directors, officers, employees, contractors, agents) or any Adjudicator to reveal information or materials gained as a result of any Informal Mediation under the CIDD unless such disclosure has been ordered by a court of competent jurisdiction. Neither Party shall call the Adjudicator or us (including our directors, officers, employees, contractors, or agents) as a witness (either in person or to produce documents or other materials) in any proceedings which arise from, or are in connection with, the matters discussed in the mediation.

## **6. Without Prejudice**

**6.1.** Documents and information which are ‘without prejudice’ (or are marked as being ‘without prejudice’) shall not be admissible before the Adjudication and are precluded under Article 8 of the Human Rights legislation as each party has an expectation that the matters will not be put before the Court; however where documents are marked without prejudice and the contents of the documents are not genuinely entitled to a marking of without prejudice, these shall be able to be considered by the adjudicator.

**6.2.** Application for consideration of Without Prejudice Material may be made at any time by any party prior to that Party’s submissions. (submissions being Complaint, Response, Reply to response).

**6.3.** Prior to submission of Without prejudice Material, Form CIDD-WP1 (available from the Registry) shall be completed and returned to the registry with a processing fee of £25 when an adjudication on the admissibility of the Without Prejudice Material shall be made. Only one CIDD-WP1 application shall be allowed by each party.

**6.4.** The adjudicator will not consider materials appropriately marked Without Prejudice if:

**6.4.1.** they are generated within Informal Mediation; or

**6.4.2.** the Adjudicator believes that it is in the interests of justice that the document or information be excluded from consideration.

**6.4.3.** the Adjudicator believes that it is in the right of fair trial is prejudiced in any way by the admitting of the document or information.

## **7. Communications and Change of Details during CIDD Procedure**

**7.1.** During the course of proceedings under the CIDD, if either Party wishes to change its contact details it must notify us of all changes.

**7.2.** Except as otherwise provided in this Procedure or as otherwise decided by us or if appointed, the Adjudicator, all communications provided for under this Procedure shall be (rebuttable) deemed to have been received:

**7.2.1.** if sent by fax, on the date transmitted; or

**7.2.2** if sent by first class post, on the third Day after posting; or

**7.2.3** if sent via the Internet, on the date that the communication was transmitted;

## **8. Timelimits<sup>[TTT]</sup><sub>[SEP]</sub>**

**8.1.** Unless otherwise provided in this Procedure, the time periods provided for under the Policy shall apply but the Arbitrator shall have discretion over the sanction for late delivery.

**8.2.** Unless otherwise provided in this Procedure, the time periods for post set out above shall apply for calculation of time periods.

**8.3.** Service shall be required on both the Registry and the Other Parties prior to the expiry of any time-limits. The Parties must not serve any material directly on the Arbitrator.

**8.4.** . Any communication (except for communications relating to Informal Mediation or if other exceptional circumstances apply) between:

**8.4.1.** registry and any Party shall be copied by registry to the other Party and if appointed, the Adjudicator, subject to paragraph 13, below; and

**8.4.2.** a Party to another Party shall be copied by the sender to registry and we will copy such correspondence to the Adjudicator, if appointed.

## **9. Formal Complaint Procedure<sup>[1]</sup><sub>SEP</sub>**

There is a 2 stage process for any claim following informal mediation:

### **Complaint Stage**

**9.1.** The Claimant files a complaint and pays the Claimant Domain Dispute Fee.

**9.2.** Registry will send the Complaint to the Respondent

### **Response Stage**

**9.3.** The Respondent files the Response & the parties pay the relevant Domain Arbitration Fees.

### **Adjudication Stage**

**9.4** The arbitrator is appointed and a decision made making a recommendation to the Registry.

**9.5.** All Communication shall be made in English.

## **10. The Complaint**

10.1. Any person or entity may submit a complaint to us in accordance with the Policy and this Procedure.

10.2. More than one person or entity may jointly make a complaint. Where this occurs the joint Complainants must be part of the same corporate group and must:

10.2.1. all sign the hard copy of the complaint (or have it signed on their behalf);

10.2.2. specify one of the Complainants, or a single representative, who will be the 'lead Complainant' who will receive correspondence on behalf of all the Complainants and is entitled to act on behalf of them all (e.g. in Informal Mediation); and

10.2.3. specify which Complainant the Complainants wish to become the sole registrant of each Domain Name(s), if the Complainants are successful (this does not bind the Adjudicator).

10.3. The Complainant must send the complaint to Registry using the online electronic forms on our web site (except to the extent not available for attachments or if other exceptional circumstances apply, in which case hard copies may be sent as an alternative). The complaint shall:-

10.3.1. not exceed 5000 words (not including the text set out in paragraph 3(c)(ix) below and

annexes) .This shall be provided in Word format or similar (i.e. Open-Source Word Processor) format or plain text but shall not be password protected;

10.3.2. be limited to 50 pages of annexes save where the Registry has given permission for additional pages of annexes and paid the relevant fee (being £1 per additional page).

10.3.3. specify whether the Complainant wishes to be contacted direct or through an authorised representative, and set out the email address, telephone number, fax number and postal address which should be used;

10.3.4. set out any of the Respondent's contact details which are known to the Complainant and specify the steps taken to verify those addresses and whether communication to those addresses have been acknowledged by the Respondent;

10.3.5. specify the Domain Name and the name or mark which is identical or similar to the Domain Name and in which the Complainant asserts it has Rights;

10.3.6. describe in accordance with the Policy the grounds on which the complaint is made including in particular:

10.3.6.1. what Rights the Complainant asserts in the name or mark;

10.3.6.2. why the Domain Name should be considered to be infringing

10.3.6.3. why the Domain Name should be considered to be an Abusive Registration in the hands of the Respondent;

10.3.6.4. any other applicable aspects of the policy as well as any other grounds which support the Complainant's assertion;

10.3.7. specify whether the Complainant is seeking to have the Domain Name transferred, suspended, cancelled or otherwise amended;

10.3.8. specify whether any legal proceedings have been commenced or terminated or otherwise discontinued or determined in connection with the Domain Name;

10.3.9. state that the Complainant will submit to the exclusive jurisdiction of the Alderney or Guernsey courts with respect to any legal proceedings relating the CIDD process or otherwise seeking to appeal, reverse or otherwise challenge the effect of a Decision requiring the suspension, cancellation, transfer or other amendment to a Domain Name registration,

10.3.10. state that the Complainant will not submit the registry or the adjudicator to any claim for damages or legal costs whatsoever;

10.3.11. state that the Complainant will submit to exclusively English law;

10.3.12. 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 registry nor its directors, officers, employees or servants nor any Adjudicator or adjudicator shall be liable for anything done or omitted in connection with*



*any proceedings under the CIDD Service 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, uberimmae fides and complete and this complaint is not being presented in bad faith and the matters stated in this complaint comply with the Procedure and applicable law.*

*The Complaint agrees to abide by the Registry's Domain Dispute Rules and Regulations. If the Adjudicator orders a transfer of the Domain Name(s) then I agree to be bound by Registry's Terms and Conditions for the Registration of Domain Names, and in particular the provisions relating to registry's processing of personal data."*

10.3.13. Attach three copies of any written documentary or other evidence on which the Complainant relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark, together with an index of the material attached.

10.3.14. The complaint may relate to more than one Domain Name, provided that those Domain Names are registered in the name of the Respondent and subject to:<sup>[SEP]</sup>a) three names being included in the stated fee:<sup>[SEP]</sup>b) thereafter £50 per domain name

10.4. If the Complainant does not pay the applicable fee within the time limit, we will deem the complaint to be withdrawn, in such event, the Complainant shall not be prevented from submitting a different complaint to us.

10.5. Once the Complainant fee is paid, we will appoint the Adjudicator, we will notify the Parties of the name of the Adjudicator appointed.

## **11. Notification of Complaint and Responses**

11.1. We will check that the complaint complies with the CIDD Policy and this Procedure and, if so, Registry will forward it to the Respondent together with Registry explanatory coversheet within seven (7) Days of Registry receipt of the complaint.

11.2. If Registry find that the complaint does not comply with the Policy and this Procedure, Registry will promptly notify the Complainant of the deficiencies Registry have identified. The Complainant shall have seven (7) Days from receipt of notification within which to correct the deficiencies and return the complaint to us, but no further detail may be added and if such Complaint is not submitted duly corrected, the complaint to be withdrawn and the fee forfeit. This will not prevent the Complainant submitting a different complaint to us but a new fee will be payable.

11.3. Proceedings under CIDD will commence on the earliest date upon which the complaint is deemed to have been received by the Respondent in accordance with this Policy.

11.4. Registry will promptly notify the Parties of the date of commencement of such proceedings.

11.5 Registry communications will be by sending the complaint to the Parties by using, in

Registry discretion, any of the following means:

a) sending the complaint by first class post, fax or email to the Parties at the contact details shown on the Complaint or as the registrant or other contacts in Registry domain name register database entry for the Domain Name;

b) sending the complaint in electronic form (including attachments to the extent available in that form) by email to postmaster@<the Domain Name>, Webmaster@<the Domain Name> and admin@<the Domain Name> or any e-mail address provided to the Registry; or

c) if the Domain Name resolves to an active web page (other than a generic page which Registry conclude is maintained by a registrar for parking Domain Names), to any email address shown or email links on that web page so far as this is practicable; or

d) sending the complaint to any addresses provided to us by the Parties so far as this is practicable.

e) (optionally as additional notification) SMS message to any mobile phone number provided, VOIP or IM address provided).

**11.6** Registry will provide until Respondent responds, the Complaint on the CIDD Pages of the Registry.

**11.7** Except as set out herein, all written communication to a Party or a Party's representative under the Policy or this Procedure shall be made to the Registry and by fax, first class post or email. Email communications should be sent in plain text so far as this is practicable.

## **12. The Respondent**

**12.1.** Within fifteen (15) Days of the date of commencement of proceedings under the CIDD, the Respondent shall submit a response to us together with the Response Fee deposit or Domain Arbitration Fee as specified.

**12.2.** Within seven days (7) following Registry receipt of the response, Registry will forward the response to the Complainant.

**12.3.** The Respondent must send the response to us using the online electronic forms on Registry web site (except to the extent not available for attachments or if other exceptional circumstances apply, in which case hard copies may be sent as an alternative) or by written submission but where written submission is made, the Complaint must include an electronic version.

**12.4.** The response shall:

**12.4.1.** not exceed 5000 words (not including annexes). This shall be provided in Word format or Open Office format or plain text and shall not be password protected.;

**12.4.2.** include any grounds the Respondent wishes to rely upon to rebut the Complainant's assertions including any relevant factors set out in the Policy;

12.4.3. specify whether the Respondent wishes to be contacted direct or through an authorised representative, and set out the email address, telephone number, fax number and postal address which should be used;

12.4.4. specify whether any legal proceedings have been commenced or terminated or otherwise discontinued or determined in connection with the Domain Name;

12.4.5. state that the Respondent will submit to the exclusive jurisdiction of the Alderney or Guernsey courts with respect to any legal proceedings relating the CIDD process or otherwise seeking to appeal, reverse or otherwise challenge the effect of a Decision requiring the suspension, cancellation, transfer or other amendment to a Domain Name registration,

12.4.6. state that the Respondent will not submit the registry or the adjudicator to any claim for damages or legal costs whatsoever;

12.4.7. state that the Respondent will submit to exclusively English law;

12.4.8. conclude with the following statement followed by the signature of the Respondent or its authorised representative:-

*“The Respondent 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 registry nor its directors, officers, employees or servants nor any Adjudicator or adjudicator shall be liable for anything done or omitted in connection with any proceedings under the CIDD Service 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 Respondent’s knowledge true uberimmae-fides and complete and is not being presented in bad faith and the matters stated in this complaint comply with the Procedure and applicable law.*

*The Respondent agrees to abide by the Registry’s Domain Dispute Rules and Regulations.*

*If the Adjudicator orders a transfer of the Domain Name(s) then I agree to be bound by Registry’s Terms and Conditions for the Registration of Domain Names, and in particular the provisions relating to registry’s processing of personal data.”*

12.4.9. Attach three copies of any written documentary or other evidence on which the Respondent relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark, together with an index of the material attached.

### **13. Non-Response by Registrant/Non-Payment by Registrant**

13.1. If the Respondent does not submit a response or does not pay the Response Deposit Fee or place an acceptable bond, Registry will notify the Parties.

### **14. Reply by the Complainant**

14.1. Within seven (7) Calendar Days of receiving the response from us, the Complainant may submit to us a reply to the Respondent’s response, which shall not exceed 2000 words (not including annexes limited to 10 pages). If a reply is submitted it must be submitted as far

as possible in electronic form using Registry online forms, unless exceptional circumstances apply in which case the reply may be submitted to us in hard copy (including three copies of all annexes). If the Complainant does not submit a reply to us within seven (7) Calendar Days submissions are deemed closed.

14.2. Any reply by the Complainant must be restricted solely to matters which are newly raised in the Respondent's response and were not raised in the Complainant's complaint as originally submitted to us.

14.3. If the reply extends to other matters, the Adjudicator may declare it inadmissible to the extent that it deals with matters going beyond those newly raised in the Respondent's response or may rule the entire response as inadmissible.

### **15. Response to Reply**

15.1. To the extent that the Adjudicator intends to take note of any new material, the Adjudicator shall invite the Respondent to file a further submission in response to that material and such further submission shall not exceed 2000 words (not including annexes limited to 10 pages).

### **16. Close of pleadings**

16.1. Upon close of submissions, the Adjudicator shall within 14 days and in the absence of exceptional circumstances, provide adjudication

16.2. Where the Respondent has not replied or paid the relevant fee, only the Complainant's submission and public information will be considered.

16.3. The appointed Adjudicator shall only grant an application for a summary decision if the conditions set out in the Policy are satisfied.

### **17. Further Statement**

17.1. In addition to the complaint, the response and if applicable the reply and any appeal, the Adjudicator may request further statements or documents from the Parties.

17.2. The Adjudicator will not be obliged to consider any statements or documents from the Parties which he or she has not received according to the Policy or this Procedure or which he or she has not requested.

17.3. Any communication with us intended to be passed to the Adjudicator which is not part of the standard process (e.g. other than a complaint, response, reply, submissions requested by the Adjudicator, appeal notice or appeal notice response) is a 'non-standard submission'. Any non-standard submission must contain as a separate, first paragraph, a brief explanation of why there is an exceptional need for the non-standard submission. Registry will pass this explanation to the Adjudicator, and the remainder will only be passed to the Adjudicator at his or her sole discretion. If there is no explanation, Registry may not pass on the document or information.

17.4. On receipt of a non-standard submission Registry shall copy to the other Party the

explanatory first paragraph, but Registry will only send the remainder to the other Party if and when the Adjudicator requests sight of the remainder.

### **18. In Person Hearings**

No in person hearings (including hearings by conference call, video conference and web conference) will be held unless the Adjudicator determines in his or her sole discretion and in exceptional cases, that such a hearing is necessary to enable him or her to come to a Decision.

### **19. Impartiality and Independence**

19.1. The Adjudicator shall be impartial and independent and both before accepting the appointment and during the proceedings will disclose to us any circumstances giving rise to justifiable doubt as to his or her impartiality or independence.

19.2. Registry will have the discretion to appoint a substitute Adjudicator if necessary in which case Registry will adjust the timetable accordingly.

19.3. A Party and the Adjudicator must not communicate directly.

19.4. All communication between a Party and the Adjudicator must be made through us.

### **20. General Powers of Registry and the Adjudicator**

20.1. We, or the Adjudicator if appointed, may in exceptional cases extend any period of time in proceedings under the CIDD.

20.2. The Adjudicator shall determine the admissibility, relevance, materiality and weight of the evidence.

20.3. Registry may from time to time implement quality control measures, including peer review, and shall set out the details of such quality control measures on Registry web site.

20.4. The determination of whether exceptional circumstances exist under any provision of this Procedure or the Policy shall be in Registry sole discretion.

20.5. Amendment of any provision of this Procedure or the Policy shall be in Registry sole discretion

### **21. Lengthy Submissions**

21.1. If Registry find that a submission by a Party exceeds the word limit, Registry will return the submission to that Party who will within seven (7) Days return a submission to us which complies with the word limits. If Registry do not receive the submission back from:

21.1.1. the Complainant, Registry will deem the complaint to be withdrawn;

21.1.2. the Respondent, Registry will deem the response to be withdrawn.

21.1.3. Withdrawal will not stop the Complainant from submitting a different complaint, although a new fee will be payable.

### **22. Default**

22.1. If, in the absence of exceptional circumstances, a Party does not comply with any time period laid down in the Policy or this Procedure, the Adjudicator may deem that submission period closed when a Decision may be made on the Complaint.

22.2. If the Adjudicator has not been appointed Registry shall take any action which it deems appropriate in its sole discretion, unless prescribed by this Procedure.

22.3. In the absence of exceptional circumstances, if a Party does not comply with any provision in the Policy or this Procedure or any request by us or the Adjudicator, the consequences set out herein will follow and in the absence of stated consequences under the policy, the Adjudicator will draw such inferences from the Party's non compliance as he or she considers appropriate.

### **23. Adjudicator Decision**

23.1. The Adjudicator will decide a complaint on the basis of the Parties' submissions, the Policy and this Procedure.

23.2. The Adjudicator may (but will have no obligation to) look at any web sites referred to in the Parties' submissions and public information.

23.3. There may be occasions where the Adjudicator is in possession of relevant information, which is not in the case papers and upon which he or she wishes to rely for the purposes of the Decision. In such circumstances the Adjudicator may inform the Parties and invite them to make submissions if the Adjudicator deems it appropriate.

23.4. The adjudicator may extend the timeline for decision to 28 days in exceptional circumstances for peer review of the draft Decision.

23.5. The Decision shall be in writing and signed, provide the reasons on which it is based, indicate the date on which it was made and identify the name of the Adjudicator.

23.6. If the Adjudicator concludes that the dispute is not within the scope of the Policy, he or she shall state that this is the case.

### **24. Bad Faith Findings**

24.1. If, after considering the submissions, the Adjudicator finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking, the Adjudicator shall state this finding in the Decision.

24.2. If the Complainant is found on three separate occasions within a 2-year period to have brought a complaint in bad faith, Registry will not accept any further complaints from that Complainant for a period of 2 years.

### **25. Communication of Decision to Parties and Implementation of Decision**

25.1. Within three (3) Days of Registry receipt of a Decision from the Adjudicator, Registry will communicate the full text of the Decision to each Party and the date for the implementation of the Decision in accordance with the Policy.

25.2. Registry will publish the full Decision and the date that any action which the Decision requires will be taken, on Registry web site.

25.3. If the Adjudicator makes a Decision recommending that a Domain Name registration should be cancelled, suspended, transferred or otherwise amended, Registry will implement

that Decision by making any necessary changes to Registry domain name register database after fourteen (14) Days of the date that the Parties were notified, unless, during the period, Registry receive from either Party:

25.3.1. an appeal or statement of intention to appeal complying with paragraph 18, in which case Registry will take no further action in respect of the Domain Name until the appeal is concluded; or

25.3.2. official documentation showing that the Party has issued and served (or in the case of service outside England and Wales, commenced the process of serving) legal proceedings against the other Party in respect of the Domain Name.

25.3.3. In the event of Court action , Registry will take no further action in respect of the Domain Name unless Registry receive either (a) Notification from the Court which satisfies us that the Parties have reached a settlement; or (b) evidence which satisfies us that such proceedings have been dismissed, withdrawn or are otherwise unsuccessful.

## **26. Appeal**

26.1. Either Party shall have the right to appeal a Decision by submitting within 14 days of the decision:

26.1.1. a statement of the intention to appeal or an appeal notice, when Registry will forward the same to the other Party and.

26.1.2. The appropriate appeal fee.

26.2. A statement of intention to appeal should only contain sufficient information to make it clear that an appeal is requested. The statement of intention to appeal should not contain the actual grounds or reasons for appeal.

26.3. If an appeal notice or intention to appeal has been given, the appellant within a further 7 days (i.e. within 21 days of the decision) shall provide the detailed grounds and reasons of appeal not to exceed 1000 words, but the appeal shall contain no new evidence or annexes unless these have arisen since submission was last made by that Party. The Registry will forward this to the other Party and appoint the Appeal panel.

26.4. Within ten (10) Days of receiving the appeal notice from us, the other Party may submit to us a Response to the Appeal.

26.5. An appeal notice response must not exceed 1000 words, should set out detailed grounds and reasons why the appeal should be rejected but should contain no new evidence or annexes unless these have arisen since submission was last made by that Party. The Registry will forward this to the other Party.

26.6. Following the filing of an appeal and receipt of any Appeal Response (or the expiry of the deadline to do so) Registry will provide the same to the Appeal panel.

26.7. The test of impartiality shall apply to each member of the appeal panel.

26.8. The appeal panel should not normally take into consideration any new evidence

presented in an appeal notice or appeal notice response, unless they believe that it is in the interests of justice to do so.

26.9. An Appeal Decision shall be made within 30 days of the close of submissions or 45 days in the event of peer review of the draft appeal Decision.

26.10. Appeal Decisions cannot be subject to any appeal within the CIDD.

26.11. The appeal panel will consider appeals on the basis of a full review of the matter and may review procedural matters.

### **27. Settlement or Other Grounds for Termination**

27.1. If, before a Decision is made the Parties agree and notify us of a settlement which Registry approve, whether or not pursuant to Informal Mediation, Registry will terminate proceedings under the CIDD Service.

27.2. If, before a Decision is made, it becomes unnecessary or impossible to continue proceedings under the CIDD Service for any reason, Registry will terminate proceedings under the Dispute Resolution Service unless a Party raises justifiable grounds for objection within a period of time which Registry will determine.

### **28. Effect of Court Proceedings**

28.1. If legal proceedings relating to a Domain Name are issued in any Channel Island court before or during the course of proceedings under the CIDD and are brought to Registry attention, Registry will suspend the proceedings, pending the outcome of the legal proceedings.

28.2. If legal proceedings relating to a Domain Name are issued in any Court other than a Channel Island court before or during the course of proceedings under the CIDD and are brought to Registry attention, Registry may at Registry discretion suspend the proceedings, pending the outcome of the legal proceedings.

28.3. A Party must promptly notify us if it initiates legal proceedings in a court of competent jurisdiction in relating to a Domain Name during the course of proceedings under the CIDD.

28.4. The operation of CIDD will not prevent either the Complainant or the Respondent from submitting the dispute to a court of competent jurisdiction.

### **29. Exclusion of Liability**

29.1. Neither Registry nor Registry directors, officers, employees or servants nor any Adjudicator shall be liable to a party for anything done or omitted in connection with any proceedings under the CIDD unless the act or omission is shown to have been in bad faith.

### **30. Modifications to the Policy and Procedure of the Dispute Resolution Service**

30.1. Registry reserve the right to make reasonable modifications to the Policy and Procedure at any time for good reason and at Registry entire discretion.

30.2. Except where Registry are acting in pursuance of a statutory requirement or a court order or other unforeseen urgent event, changes will be implemented following a process of



open public consultation.

30.3. Except where Registry are acting in pursuance of a statutory requirement or a court order or other unforeseen urgent event, each such change will be published in advance (where practicable, thirty (30) calendar days in advance) on Registry web site to be found at <http://www.channelisles.net> and will become binding and effective upon the date specified therein.

30.4. The Claimant and Respondent will be bound by the Policy and Procedure which are current at the time the CIDD is commenced until the dispute is concluded, but subject always to amendments in pursuance of a statutory requirement or a court order or other unforeseen urgent event.

### **31. E-filing**

31.1. Notwithstanding the provisions of the Policy and this Procedure which require hard copies of documents and any annexes to be filed together with the original signatures of the Parties, Registry shall in Registry sole discretion permit electronic filing of all forms, documents and annexes, and may not require hard copies to be served.

31.2. Details of the e-filing procedure as exists from time to time will be given on Registry web site and it is strongly recommended that such e-filing procedure is followed unless exceptional circumstances exist.

### **32. Deposit Fee**

32.1. If both parties pay the relevant Domain Arbitration fee then adjudication on the submitted case (with any investigatory additional material) will arise and the stage 2 fee is refunded to the prevailing party.

### **33. Precedent Value**

33.1. Registry will publish decisions of the adjudicators and the appeal panel.

33.2. Adjudications and Appeal decisions will not have precedent value, but will be of persuasive value to Adjudicators in future decisions.

### **34. Interpretation**

34.1. Registry may refer questions of interpretation of the Policy and Procedure to the adjudicator panel and their decision shall be final.

34.2. Any determination arising as a result of Registry referral will not affect any Decision previously made under the CIDD.

### **35. Re-Hearings**

35.1. A non-exhaustive list of examples which may be exceptional enough to justify a re-hearing include:

35.1.1. serious misconduct on the part of the Adjudicator, a Party, witness or lawyer;

35.1.2. false or forged evidence having been offered to the Adjudicator;

35.1.3. the discovery of credible and material evidence which could not have been reasonably

foreseen or known for the Complainant to have included it in the evidence in support of the earlier complaint (but only in exceptional circumstances);

**35.1.4.** a breach of natural justice; and

**35.1.5.** the avoidance of an unconscionable result.

### **36. Transfers During a Dispute**

**36.1.** A Respondent may not transfer a Domain Name registration:

**36.1.1.** whilst proceedings under the DS are ongoing in relation to the Domain Name

**36.1.2.** for a period of fourteen (14) Days after their conclusion or if later the Appeal, save that if a settlement is reached, the transfer may be permitted within 7 days of notification of settlement;

**36.1.3.** whilst a court proceeding or arbitration in respect of the Domain Name registration is ongoing in a court of competent jurisdiction.

**36.2. Registry** reserve the right to reverse any transfer of a Domain Name registration which does not comply with this paragraph.

### **37. Governing Law and Jurisdiction**

37.1. Any dispute in relation to this procedure shall be subject to the sole and exclusive jurisdiction of the Channel Islands courts, being (at the Registry's determination) <sup>[SEP]</sup>a) in relation to .gg domains of Alderney &/or Guernsey Courts and <sup>[SEP]</sup>b) in relation to .je domains of Alderney &/or Jersey Courts.

37.2. Any dispute in relation to this procedure shall be subject to the sole and exclusive application of English Law.

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#### **Note to clause 3**

Note: Failure on the Respondent's part to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration.

Note: There shall be a rebuttable presumption of Abusive Registration if the Complainant proves that the Respondent has been found by the CIDD Process in three or more adjudications in the previous two (2) years before the Complaint was filed to have made an Abusive Registration

#### **Note to Clause 4**

Notes: The adjudicator may determine that the Domain Name is not part of a wider pattern or series of registrations because the Domain Name is of a significantly different type or character to the other domain names registered by the Respondent.

Note: Fair use may include sites operated solely in tribute to or in criticism of a person or business.

Note: Where legitimate or fair use is asserted, the Respondent must rebut the presumption by proving in the Response that the registration of the Domain Name is not an Abusive Registration.

Note: Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves lawful activities and where generic names are permitted in other jurisdictions, the adjudicator will review each case on its merits.

Note: Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) is not of itself objectionable under the Policy, however the nature of the Domain Name, the nature of the advertising links on any parking page associated with the Domain Name, the use of the Domain Name generally and its advertising and content will be taken into account.