

Sunrise Challenge Rules

(Effective as of 8 November 2007)

Administrative proceedings for the resolution of disputes pursuant to the Sunrise Registration Challenge Policy adopted by DotAsia shall be governed by these Rules.

1. Definitions

In these Rules:

Centre refers to the Hong Kong International Arbitration Centre.

Challenger means a party which is challenging a domain name registration under the Sunrise Challenge Policy.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

Party means a Challenger or a Respondent.

Panelist means an individual appointed by a Provider to be a member of a Panel.

Policy means the Sunrise Registration Policy that is incorporated by reference and made a part of the Registration Agreement.

Registrar means the entity with which the Respondent has registered a domain name that is the subject of a challenge.

Registration Agreement means the agreement between a Registrar and a domain name holder.

Registry means the registry operator for the <.asia> top-level domain.

Respondent means the holder of a domain name registration against which a challenge is initiated.

2. Communications

- (a) Except as otherwise provided in these Rules, any communication required under these Rules shall be made by electronic mail via the Internet.
- (b) For the purposes of any communications to the Centre, the following addresses should be used:
- (i) electronic mail: see <http://www.hkiac.org/odr/dotAsia.htm>
- (ii) facsimile transmission: see <http://www.hkiac.org/odr/dotAsia.htm>
- (iii) postal or courier service:
Hong Kong International Arbitration Centre
38/F Two Exchange Square,
8 Connaught Place,
Central,
Hong Kong
- (c) All communications shall be made in the language prescribed in Paragraph 6.
- (d) Either Party may update its contact details by notifying the other Party, the Centre, the Registrar and the Registry.
- (e) Except as otherwise provided in these Rules, all communications provided for under these Rules shall be deemed to have been made:
- (i) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable; or
- (ii) if by postal or courier service, on the date of mailing marked on the receipt; or
- (iii) if delivered by facsimile transmission, on the date shown on the confirmation of transmission.
- (f) Except as otherwise provided in these Rules, all time periods calculated under these Rules shall commence on the earliest date that the communication is deemed to have been made in accordance with Paragraph 2(e).
- (g) Except as otherwise provided in these Rules, any communication by

- (i) the Centre, following the commencement of an administrative proceeding pursuant to Paragraph 4(c), to any Party shall be copied to the other Party; and
- (ii) a Party shall be copied to the other Party and the Centre.
- (h) It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes.
- (i) In the event that a Party sending a communication receives notification of non-delivery of the communication, that Party shall promptly notify the Centre of the circumstances of the notification.
- (j) When a paper submission is to be made to the Centre by a Party, it shall be submitted in three (3) sets, including the original of such submission.

3. The Challenge

- (a) Any person or entity may initiate an administrative proceeding by submitting a challenge to the Centre in accordance with the Policy and Rules.
- (b) The challenge shall be submitted in electronic form via the Internet using the Model Challenge Form made available by the Centre.
- (c) The challenge shall:
 - (i) Request that the challenge be submitted for decision in accordance with the Policy and Rules and describe why the Domain Name registration should be considered subject to the Policy;
 - (ii) Provide the full name, postal and e-mail addresses, and the telephone and telefax numbers of the Challenger and of any representative authorised to act for the Challenger in the administrative proceeding;
 - (iii) Provide complete bank account details of the Challenger for purposes of any reimbursement of fees in accordance with Paragraph 13;
 - (iv) Provide the full name of the Respondent and, if different from the contact details available in the Whois database for the Domain Name, provide all information known to the Challenger regarding how to contact the Respondent or any representative of the Respondent, including contact information based on pre-challenge dealings;

- (v) Specify the Domain Name that is the subject of the challenge;
- (vi) Identify the Registrar with whom the Domain Name is registered at the time the challenge is filed;
- (vii) Describe, in accordance with the Policy, the grounds on which the challenge is made including, in particular, why the Domain Name that is the subject of the dispute should be considered to have been registered in violation of the Sunrise registration conditions set forth in the Registration Agreement with specific reference to Policy, Paragraph 4 (a).

In addition, Challengers requesting transfer of the disputed Domain Name shall also specify any and all bases for such transfer with specific reference to Policy, Paragraph (4)(c).

The above description should not exceed 2000 words;

(viii) Specify, in accordance with the Policy, the remedies sought, i.e. transfer or cancellation of the Domain Name registration;

(ix) Identify any other proceedings that have been commenced or terminated in connection with or relating to the domain name that is the subject of the challenge;

(x) State that a copy of the challenge, together with the coversheet set out in Annex A hereto, has been sent or transmitted to the Respondent, the Registrar and the Registry;

(xi) Include the following statement (for Challengers seeking transfer of the Domain Name):

"Challenger certifies that the trademark or service mark forming the basis of this challenge and potential registration of the Domain Name in question was issued prior to _____ (the date of the Cut-Off Date of a particular sub-phase) and was current (non-expired) at the time of the registration of the Domain Name.";

(xii) Include the following statement (for all Challengers):

"Challenger 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 domain name holder and waives all such claims and remedies against (a) the Centre, (b) the Registrar, (c) the Registry, and (d) ICANN, as well as their directors, officers, employees, and agents.

Challenger certifies that the information contained in this challenge is to the best of Challenger's knowledge complete and accurate, that this challenge is not being presented for any improper purpose, such as to harass, and that the assertions in this challenge are warranted under the Sunrise Registration

Challenge Policy, the Rules for Sunrise Registration Challenge Policy and under applicable law, as it now exists or as it may be extended by good-faith and reasonable argument."

(xiii) Specify the bank details (including account name, account number, bank name and swift code) for purposes of payment of the Challenger's fee in accordance with Paragraph 13 (a).

(d) The challenge may not relate to more than one Domain Name.

(e) Challengers seeking transfer of the Domain Name, shall submit to the Centre the originals or certified copies of any trademark or service mark certificates required to be submitted under Paragraph 4(c) of the Policy within sixty (60) days of the commencement of the administrative proceeding, or, as the case may be, within 60 days of the notification of the opportunity to register the Domain Name in accordance with Policy, Paragraph 4(e).

4. Notification of Challenge

(a) The Centre shall review the Challenge for formal compliance with the Policy and the Rules. If the challenge is found to be in compliance with the Policy and the Rules and the Centre is satisfied that the Challenger's fee has been paid in accordance with Paragraph 13 (a), the Centre shall notify the challenge to the Respondent by sending it to the e-mail addresses and telefax numbers of the administrative contact for the Domain Name, as shown in the Whois database at the time of the notification of the Challenge by the Centre to the Respondent. In addition, the Centre shall notify the challenge to the e-mail addresses and telefax numbers of the Respondent, or of any representative of the Respondent, as provided by the Challenger in accordance with Paragraph 3 (c) (iv).

(b) If the Centre finds the challenge to be formally deficient, it shall promptly notify the Challenger of the nature of the deficiencies identified. The Challenger shall have ten (10) days after such notification within which to correct any such deficiencies, after which the administrative proceeding will be deemed terminated without prejudice to the submission of another challenge by the Challenger.

(c) The date of commencement of the administrative proceeding shall be the date the Challenge is notified by the Centre to the Respondent.

(d) The Centre shall notify the Challenger, the Respondent, the Registrar, and the Registry of the date of commencement of the administrative proceeding.

(e) If the Challenger fails to remedy any deficiencies identified by the Centre within the time period provided for in Paragraph 4 (b), the Centre shall notify the Challenger, the Respondent, the Registrar and

the Registry of the deemed termination of the challenge and the non-refundable fee of USD 100 paid by the Challenger pursuant to Paragraph 13 (a) of the Rules shall be deemed forfeited.

5. The Response

(a) Within ten (10) days of the date of commencement of the administrative proceeding, the Respondent shall specify the bank details (including account name, account number, bank name and swift code) for purposes of payment of the Respondent's fee in accordance with Paragraph 13 (b).

(b) Within sixty (60) days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Centre.

(c) The response shall be submitted in hard copy (with annexes) by postal or courier service (postage pre-paid and return receipt requested) and in electronic form (without annexes) via the Email using the Model Response Form made available by the Centre.

(d) The response shall:

(i) Annex the originals or certified copies of any trademark or service mark certificates required to be submitted by the Respondent under Paragraph 4(c) of the Policy and respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent to retain registration of the disputed Domain Name with specific reference to Policy, Paragraph (4);

(ii) Respond specifically to the statements and allegations contained in the challenge and include any and all bases for the Respondent to retain registration of the disputed Domain Name with specific reference to Policy, Paragraph 4©. Such description should not exceed 2000 words;

(iii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Respondent and of any representative authorized to act for the Respondent in the administrative proceeding;

(iv) Provide complete bank account details of the Respondent for purposes of any reimbursement of fees paid by the Respondent in accordance with Paragraph 13 (c);

(v) Identify any other proceedings that have been commenced or terminated in connection with or relating to the Domain Name that is the subject of the challenge;

(v) Include the following statement:

"Respondent certifies that the trademark or service mark forming the basis for the registration of the domain name was issued prior to the date set forth in the Sunrise terms and conditions and was current (non-expired) at the time of the registration of the domain name";

(vi) Include the following statement followed by the signature of the Respondent or its authorized representative:

"Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose and that the assertions in this Response are warranted under the Sunrise Registration Challenge Policy, the Rules for Sunrise Registration Challenge Policy and under applicable law, as it now exists or as it may be extended by good-faith and reasonable argument."

(e) At the request of the Respondent, the Centre may, in exceptional cases, extend the period of time for the filing of the response.

(f) If a Respondent does not pay the Respondent's fee in accordance with Paragraph 13 (b) or does not submit a response, the Respondent shall be deemed to have defaulted and the remedy sought by the Challenger will be granted. If the Challenger has requested transfer, the transfer will be subject to a decision by the Panel that the challenge complies with the Sunrise registration conditions set forth in Policy, Paragraph 4 (c), failing which Policy, Paragraph 4 (e)(iii) shall apply.

6. Default

(a) In the event that a Respondent does not comply with any of the time periods established by the Rules or the Centre/Panel, the Centre/Panel, unless it finds exceptional circumstances apply, shall proceed to a decision on the challenge.

(b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Centre, the Centre may draw such inferences therefrom and may undertake such procedural steps as it considers appropriate.

7. Language of Proceedings

(a) A challenge may not relate to more than one Domain Name. In the event a Challenger under this Policy submitted more than one challenge against you, either you or the Challenger may petition the Centre to consolidate such disputes. The Centre may consolidate before it any or all such disputes in its

sole discretion, provided that the disputes being consolidated are governed by this Policy.

(b) Any trademark or service mark certificates in a language other than English, submitted by the Challenger in accordance with Paragraph 3(e) or the Respondent in accordance with Paragraph 5 (d)(i), must be accompanied by a certified translation into English.

8. Appointment of the Panel and Timing of Decision

(a) The Provider shall maintain and publish a publicly available name list of panelists. The Panel in charge of the Sunrise Challenge shall be composed by single Panelist.

(b) the Provider shall appoint, within five (5) calendar days following receipt of the response by the Provider, or the lapse of the time period for the submission thereof, a single Panelist from its list of panelists. For the panelist appointment of specific case, the Centre shall appoint suitable person from the list, having regard to:

- i. the nature of the dispute;
- ii. the availability of the Panelist;
- iii. the identity of the Parties;
- iv. the independence and impartiality of the Panelist;
- v. any stipulation in the relevant Registration Agreement.

(c) The Panelist shall have the right to decide by its sole discretion whether to accept the appointment. To ensure the promptness and smoothness of the domain name dispute resolution proceedings, if any of the Panelists designated cannot accept the appointment, the Provider shall appoint another Panelist from its list of panelists at its own discretion.

(d) Once the Panel is appointed, the Provider shall promptly forward the case file to all members of the Panel and shall notify immediately the parties of the Panelist appointed and the date by which the Panel shall forward its decision on the complaint to the Provider.

(e) A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence. If, at any stage during the proceedings, new circumstances arise which could give rise

to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panelist.

Prior to the acceptance of appointment as a Panelist, a candidate shall be required to submit to the Provider a Declaration of Independence and Impartiality in writing.

Where either party thinks that any Panelist has material interests with the opposing party and that such circumstance may affect the fair ruling of the case, that party may request to the Provider for removing the Panelist before the Panel has rendered its decision. Removal of the Panelist shall be in the Provider's discretion.

(f) No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications between a Party and the Panel or the Provider shall be made to a case administrator appointed by the Provider in the manner prescribed in these Rules.

9. Hearing and Ruling

(a) The Panel shall conduct the proceedings in such manner as it considers appropriate according to these Rules, and decide a challenge on the basis of the statements and documents submitted and in accordance with the Policy, as well as any rules and principles of law which it deems applicable. If a Respondent does not submit a response, the challenge will be granted on the basis of the Respondent's failure to submit its Response, provided the challenge is in formal compliance with the Policy and Rules. If the challenger has requested transfer of the Domain Name, that transfer will be subject to the Centre's decision that the challenge complies with the Sunrise registration conditions set forth in Paragraph 4(c).

In all cases, the Panel shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case, give out its reasons and provide the evidence.

The Panel shall ensure that the proceedings take place with due expedition. It may, at the request of

a party, extend, under some special circumstances, a period of time fixed by these Rules.

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

- (b) In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the parties.
- (c) Unless otherwise requested or agreed by the Panel in exceptional circumstances, no further statements or documents from either of the Parties are to be submitted.
- (d) There shall be no in-person hearings.
- (e) In the event that a party, in the absence of exceptional circumstances, does not comply with any of the provisions established by these Rules or any of the time periods fixed by the Panel, the Panel shall proceed to a decision on the complaint.
- (f) If a party, in the absence of exceptional circumstances, does not comply with any provisions of these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.
- (g) The Panel shall render its decision on the complaint and forward the decision to the Provider within fourteen (14) calendar days of its appointment. In exceptional circumstances, the Centre may extend the time limit as required for the Panel to forward its Decision.
- (h) The Panel's decision shall be made in electronic form and in hard copy, provide the final decision , indicate the date on which it was rendered and identify the name(s) of the Panelists.
- (i) In the event of any legal or arbitral proceedings initiated prior to or during the sunrise challenge proceedings in respect of a domain name which is the subject of the challenge, the Provider or the Panel shall have the discretion to decide whether to suspend or terminate the proceedings, or to proceed to a decision.
Where a party initiates any legal or arbitral proceedings during the pendency of the sunrise challenge proceedings in respect of a domain name which is the subject of the challenge, it shall promptly notify the Panel and the Provider.

- (j) Before the Panel's decision, the sunrise challenge proceedings may be terminated, if
 - i \ The parties agree on a settlement.
 - ii \ The Panel thinks that it becomes unnecessary or impossible to continue the proceedings for other reasons, unless a party raises justifiable grounds for objection within a period of time to be determined by the Panel

10. The Panel's Decisions

- (a) The Panel's decision of whether the Sunrise registration conditions set forth in Paragraph 4(c) of

the Policy are met will be based solely on a prima facie examination of any trademark or service mark certificates submitted in relation to the information contained in the relevant DotAsia Whois database. The Panel's decision is of an administrative nature and shall be final. The Panel shall not be required to state reasons for its decision.

(b) The Panel, in its sole discretion, may prior to rendering the decision, consult relevant intellectual property offices in the context of reaching its determination.

11. Communication of Decision

(a) The Centre shall communicate the decision to each Party, the Registrar, and the Registry.

(b) If the Centre decides that the Domain Name be transferred to the Challenger in accordance with Policy, Paragraph 4, it shall provide the Challenger with an authorization code generated by the Registry which will allow the Challenger to register the Domain Name in its name and to update all Challenger Whois information, at the Registrar of its choice, within 30 days of the date on which the notification of the authorization is sent to the Challenger, in accordance with the Sunrise registration conditions of the Registration Agreement.

(c) In case of multiple challenges, the Centre will issue the relevant notifications in accordance with Paragraph 4 (e) of the Policy.

(d) Within seven (7) days of receiving the decision, a Party may by written notice to the Centre and the other Party requests the Panel to correct in the decision any errors in computation, any clerical or typographical errors or any errors of a similar nature. Any such corrections shall be given in electronic form and in hard copy to the Parties and shall become a part of the decision.

(e) The Panel may correct any errors on its own initiative of the type referred to in Article 12(1) within seven (7) days of the date of the decision being rendered.

12. Settlement or Other Grounds for Termination

(a) If the Challenger notifies the Centre that the Parties have agreed on a settlement, the Centre may suspend or terminate the administrative proceeding, subject to any conditions that may apply under Policy, Paragraph 6(a).

(b) If it becomes unnecessary or impossible to continue the administrative proceeding for any other

reason, the Centre shall terminate the administrative proceeding.

(c) In case of a termination of the administrative proceeding in accordance with (b), any fees paid by the Parties in accordance with Paragraph 13 shall be deemed forfeited.

13. Fees

(a) The filing of a challenge is subject to the payment of a Challenger's fee in the amount of USD 500, comprising of a non-refundable fee of USD 100 and a refundable fee of USD 400. This fee is to be paid by bank transfer or Cheque at the time of the submission of the challenge in accordance with Paragraph 3 (c)(xii). If the Centre is not satisfied that the Challenger's fee has been paid within 15 days of the filing of the challenge, the Centre will dismiss the challenge on the basis of the Challenger's failure to pay the Challenger's fee.

(b) The filing of a response is subject to the payment of a Respondent's fee in the amount of USD 500. This fee is to be paid by bank transfer or by cheque within ten (10) days of the date of commencement of the administrative proceeding in accordance with Paragraph 5 (a). If the Respondent fails to provide the bank information for the payment of the Respondent's fee within ten (10) days of the date of commencement of the administrative proceeding, the Centre will send a reminder to the Respondent requiring it to submit such payment within ten (10) further days. If the Centre is not satisfied that the Respondent's fee has been paid within this period, the challenge will be granted on the basis of the Respondent's failure to pay its fee. If the Challenger has requested transfer, this will be subject to a decision by the Panel that the challenge complies with the sunrise registration conditions set forth in Policy Paragraph 4(c), failing which Policy, Paragraph 4 (e)(iii) shall apply.

(c) If a Respondent pays the Respondent's fee and establishes that the domain name subject to the dispute has been registered in compliance with the sunrise registration conditions set forth in the Registration Agreement, the Centre will reimburse the Respondent's fee.

(d) If a Respondent pays the Respondent's fee but fails to establish that the Domain Name subject to the dispute has been registered in compliance with the Sunrise registration conditions set forth in the Registration Agreement, the Centre will reimburse the Challenger's fee, subject to the withholding of the non-refundable fee in the amount of USD 100.

(e) If a challenge is dismissed by the Panel in accordance with Paragraph 4 (e) (i) or (v) of the Policy, the Centre shall retain only a non-refundable fee in the amount of USD 100 as referred to in (a) and will reimburse the Respondent's fee (USD 500).

(f) Under no other circumstances will a Challenger's fee or a Respondent's fee be reimbursed by the

Centre.

14. Exclusion of Liability

The Centre and any intellectual property office consulted by the Centre shall not be liable to a Party for any act or omission in connection with any administrative proceeding under the Policy and the Rules.

15. Amendments

The version of these Rules in effect at the time of the submission of the challenge to the Centre shall apply to the administrative proceeding commenced thereby. The Registry reserves the right to modify the Rules at any time.

12 April 2012