



REVISED DRAFT .ZA REGISTRY LICENSING REGULATIONS AND PROCEDURES

(Revised version based on the submissions received by 1 February 2010)

[This is the revised version of the draft .ZA Registry Licensing Regulations and Procedures. The Regulations are prepared in compliance with section 65(1)(c) of the Electronic Communications and Transactions Act (ECTA) no. 25 of 2002, and will come into effect upon being approved and promulgated by the Minister of Communications in terms of section 68(a) of ECTA.]

REVISED DRAFT LICENSING REGULATIONS AND PROCEDURES FOR THE .ZA NAMESPACE

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CHAPTER 1

DEFINITIONS, APPLICATION AND ENFORCEABILITY

1. Definitions

In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, unless the context indicates otherwise –

"**Act**" means the Electronic Communications and Transactions Act 25 of 2002;

"**Alternative Dispute Resolution Regulations**" means the regulations promulgated by the Minister in terms of section 69(1) of the Act;

"**Applicant**" means any person applying to the Authority to be licensed to operate as a Registry, as contemplated in regulation 5(1);

"**Application**" means the application submitted to the Authority by an Applicant for a Licence;

"**Authority**" means the .za Domain Name Authority;

"**Board**" means the board of directors of the Authority;

"**Business Day**" means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;

"**ccTLD**" means country code domain at the top level of the Internet's domain name system assigned according to the two-letter codes in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries in their Subdivision);

"**Charter**" means a policy and/or procedural document which is applicable to a specific Second Level Domain, including a Sub-Domain, specifying, *inter alia*, the purpose and nature of the SLD, the criteria for registration of Domain Names within the SLD, and the manner in which the SLD will be administered;

"**Domain Name**" means an alphanumeric designation that is registered or assigned to persons or entities in a SLD in respect of an electronic address or other resource on the Internet;

"Domain Name System" means a system which translates Domain Names into IP addresses or other information;

"Fees" means the applicable fees as may be prescribed by the Authority, from time to time, and payable in terms of these Regulations;

"Licence" means a licence granted by the Authority to a Registry in accordance with section 64 of the Act;

"Management Committee" means the management committee of the Authority;

"Minister" means the Minister of Communications;

"Registrant" means an applicant for, or holder of, a Domain Name;

"Registrar" means an entity which is licensed by the Authority in terms of the .za Registrar Licensing Regulations to (i) register Domain Names on behalf of Registrants, and (ii) update Registry Data in the relevant Registry Database relating to its Registrants;

"Registrar Agreement" means the agreement to be concluded between the Registry and the Registrar, and which has been approved by the Authority in terms of these Regulations;

"Registry" means an entity licensed by the Authority to manage and administer (i) a specific SLD; and (ii) the Registry Database within that SLD;

"Registry Data" means all data maintained in the Registry Database by a Registry, including without limitation-

- (a) Domain Names;
- (b) Registrant name and contact information;
- (c) Registrar name and contact information;
- (d) Zone Records;
- (e) Registration and renewal dates; and
- (f) All other data submitted by the Registrars concerning particular Domain Names.

"Registry Database" means a database comprising of Registry Data in relation to an SLD;

"Registry Services" means the services to be performed by the Registry in terms of these Regulations, as described more fully in regulation 4 below, which services allow the generation of either DNS resource records that are published authoritatively, or responses to Domain Name availability lookup, or Whois requests for some or all of the Domain Names;

"Regulations" means these regulations, passed by the Minister in terms of section 68 of the Electronic Communications and Transactions Act 25 of 2002;

"Second Level Domain" or **"SLD"** means a sub-domain immediately following the ccTLD,

".ZA namespace" or **"ZA"** means the .ZA ccTLD assigned to the Republic of South Africa according to the two-letter codes in the International Standard ISO 3166-1 and

"Zone Records" mean the technical resource information for each Domain Name that links each Domain Name to an IP address, and which information includes authoritative nameservers, start-of-authority (SOA), mail exchanger (MX), glue records (if necessary), and DNSSec information (if applicable), and is intended for insertion into the SLD zone file.

2. **Purpose of these Regulations**

- (1) The purpose of these Regulations is to regulate and prescribe-
 - (a) the requirements with which Registries must comply in order to be licensed in terms of these Regulations;
 - (b) the circumstances and manner in which Licences may be granted or revoked;
 - (c) the determination of Fees; and
 - (d) the terms and conditions applicable to all Registries.

3. **Application of these Regulations**

- (1) These Regulations shall apply to all Registries which are licensed by the Authority in terms of these Regulations.
- (2) In addition to these Regulations, a Registry must implement Registrar Agreements and internal administrative policies and procedures aimed at facilitating the registration of Domain Names and the management and administration of Registry Data, provided that the Registrar Agreements and administrative policies and procedures are-
 - (a) approved by the Authority; and
 - (b) consistent with these Regulations and any other regulations which may be promulgated by the Authority from time to time.
- (3) To the extent that there is any conflict between the provisions of these Regulations and a Registrar Agreement or any administrative policies and procedures, these Regulations shall prevail.
- (4) The Registrar Agreement and the administrative policies and procedures, as contemplated in regulation 3(2), shall be made available on the Authority's website. For the avoidance of doubt, the Registrar Agreement and the administrative policies and procedures contemplated in regulation 3(2) shall be binding on Registrars registering Domain Names in that SLD.

CHAPTER 2

FUNCTIONS AND RESPONSIBILITIES

4. Functions and Responsibilities of Registries

(1) A Registry shall be responsible for:

- (a) the management and administration of the Registry Database of the SLD which it is licensed to operate;
- (b) the management and administration of any SLD, which it is licensed to operate; and
- (c) the development and implementation of the policies and procedures contemplated in 3(2);
- (d) performing Registry Services, which shall include managing the Registry Database, receiving Domain Name registrations, the provision of suitable domain name system infrastructure, maintenance of technical and operational records, and receiving registration payments;
- (e) implementing decisions arising out of the .ZA Domain Name dispute resolution process, in terms of the Alternative Dispute Resolution Regulations, provided that the decisions relate to Domain Names within a Registry's SLD;
- (f) accepting, processing, storing and disseminating Registry Data in accordance with the Regulations and the relevant SLD Charter;
- (g) implementing, maintaining and enhancing technical and administrative infrastructure to ensure that suitable service levels are met, including the maintenance of system integrity, stability and availability;
- (h) providing Registrar support services in relation to the relevant SLD; and
- (i) reporting to, and advising the Authority on, policy, operational and other considerations relating the Registry's SLD.

CHAPTER 3

REGISTRY LICENSING REQUIREMENTS AND PROCESS

5. Application for a Licence

- (1) Any person may, upon invitation by the Authority, apply for a Registry Licence in the form and format prescribed in Schedule A to these Regulations. For the avoidance of doubt, applications for Licences in terms of these Regulations will only be accepted upon invitation by the Authority.
- (2) An Applicant must have legal personality and operational presence in South Africa.
- (3) An Applicant may, prior to submitting its Application, approach the Authority and request clarity on any one of the following-
 - (a) the Authority's requirements, as prescribed in these Regulations;
 - (b) the process to be followed by the Authority in considering the Application submitted by the Applicant; and
 - (c) any other issues which may pertain to the Application process.
- (4) Upon receipt of any request in terms of regulation 5(3), the Authority shall render reasonable assistance to the Applicant.
- (5) An Application for a Licence must be in the form and format prescribed in Schedule A to these Regulations.
- (6) Applications and other submissions in terms of these Regulations must be submitted to the Authority, and must be accompanied by the prescribed Fees, as determined by the Authority in terms of these Regulations.
- (7) Applications must be signed by the Applicant or an authorised representative of the Applicant. To the extent that the Application has been signed by a representative of the Applicant, the Application must be accompanied by written proof of the representative's authorisation.
- (8) The Authority will not consider any Application where the Applicant has failed to comply with regulation 5(5), (6) and (7).

- (9) A Registry Licence issued by the Authority shall, subject to the provisions of Regulation 17, be valid for a period of 5 (five) years.
- (10) A Registry License may, at the Authority's sole discretion, be renewed for an additional period to be determined by the Authority, unless the Registry provides the Authority with written notice at least three (3) months before the end of the period referred to in regulation 5(9) or the then-current renewal period that it does not wish for the Registry Licence to be renewed.

6. Amendment of Applications

- (1) An Applicant may, at any time after submission of an Application, but before the Authority makes a decision thereon, submit a written request to amend the Application.
- (2) Where a request referred to in regulation 6(1) is made by an Applicant, the Authority may grant the request to amend the Application where the amendment will not-
 - (a) unfairly prejudice other interested parties;
 - (b) impede the expeditious and proper consideration of the Application; or
 - (c) materially change the Application.

7. Consideration of Applications

- (1) Upon receipt of an Application for a Licence, the Authority shall inspect the Application to ensure that the Applicant has provided all of the required information and documentation.
- (2) The Authority shall publish each Application on its website for a period of twenty one (21) Business Days and invite written representations and objections from interested parties, prior to accepting or rejecting the Application.
- (3) The Authority may, at the request of an Applicant or an interested person who submitted representations in terms of regulation 7(2), determine that any document or information which contains information justifying confidentiality shall not be open to public inspection, if such document can be separated from the Application, representations or other documents in

question.

- (4) If the Authority refuses a request contemplated in regulation 7(3), the Applicant or person concerned may withdraw the document or information in question, in which event, the Authority shall not consider the document or information so withdrawn. If the Applicant chooses not to remove the document or information, the Authority must publish the entire Application on its website for public comment.
- (5) The Authority shall be responsible for determining whether or not to accept or reject an Application. In making a determination, the Authority will take into consideration the written representations and objections that were received in relation to the Application.
- (6) The Authority may, in its sole discretion, seek expert advice in assessing an Application, and may also conduct its own investigation to verify any claims made by an Applicant in the Application.
- (7) After evaluating an Application, the Authority shall, within sixty (60) Business Days after the period contemplated in 7(2), either-
 - (a) accept the Application;
 - (b) refer the Application back to the Applicant with a request for further information; or
 - (c) reject the Application.
- (8) The Authority shall, within ten (10) Business Days of the decision referred to in regulation 7(7) having been made, notify the Applicant in writing of the decision. Such notification shall provide reasons for the decision.
- (9) After notifying the Applicant of the decision, the Authority shall, within seven (7) Business Days, publish the decision, together with the reasons therefor on its website.

8. Liability for costs of Applications

The Authority shall not be liable for any costs incurred by the Applicant in applying for a Licence in terms of these Regulations.

CHAPTER 4

TERMS AND CONDITIONS

9. General terms and conditions

- (1) A Registry shall, for the duration of the Licence, provide Registry Services in accordance with the terms of these Regulations, the technical specifications prescribed by the Authority from time to time, the applicable policies and procedures, and the provisions of a relevant Charter and Registrar Agreement, unless in terms of regulation 18-
 - (i) the Authority appoints an alternative Registry to provide Registry Services; or
 - (ii) the Registry is required by the Authority to cease provision of Registry Services.
- (2) An Applicant must, at the time of making an Application, commit itself in writing to-
 - (a) the acceptance of, and adherence to, these Regulations and to any regulations, policies, procedures, rules, regulations and technical and/or operational standards which are developed, now or in the future, by the Authority in managing the .ZA namespace;
 - (b) agreeing to pay such License and other Fees as determined in regulations 12 and 13, and such levies as may be determined by the Authority from time to time; and
 - (c) the acceptance of, and adherence to the Charter of each SLD to be managed and administered by it.
- (3) If the Registry, for any reason whatsoever, ceases to provide Registry Services or is required by the Authority to cease to provide Registry Services, the Registry will, within three (3) Business Days or any other period determined by the Authority after taking into consideration any relevant public interest matters as well as the security and stability of the Domain Name System, provide a full copy of its Registry Database to the Authority.

10. **Specific terms and conditions**

(1) A Registry must-

- (a) preserve the security and stability of its delegated SLD, .ZA namespace and the Domain Name System in general;
- (b) comply with and implement these Regulations, other regulations, policies and procedures of the Authority, the Registrar Agreement, Charter, administrative policies and procedures of the delegated SLD;
- (c) manage and, where necessary, provide Registry Services by utilising globally accepted standards and measures in Domain Name registry management;
- (d) ensure that the information submitted by Registrars in relation to each Domain Name complies with the requirements of these Regulations and applicable SLD Charter. Such information shall, as a minimum, include:
 - (i) the name, physical address, email address and telephone number of the Registrant;
 - (ii) the name and contact details of the Registrar responsible for the concerned Domain Name and contact details of technical and administrative contacts for the Domain Name; and
 - (iii) Zone Records.
- (e) pay, to the Authority, any applicable fees due to the Authority from the registration and renewal of Domain Names.
- (f) subject to any regulations or policy that the Authority may promulgate in relation to privacy or operational stability, and subject to any legislation or any other requirements relating to privacy, provide the public with reasonable on-line access, free of charge, to the Registry Database, which contains information relating to Domain Names registered within the delegated SLD which the Registry is licensed to operate, including without limitation -
 - (i) each Domain Name registered within the SLD;

- (ii) the names and contact numbers of each Registrant or the Registrants' contact persons;
 - (iii) the identity of the Registrar for each Domain Name; and
 - (iv) the expiration date of the Domain Name registration.
- (g) subject to the provisions of regulation 10(1)(g)(vi), keep personal information of the Registrant and Registrar in the Registry Database confidential and must not, unless required to do so by these and other Regulations published by the Authority, any other law of the Republic of South Africa, or by order of court, sell or otherwise provide access to the information of a Registrant or Registrar to any third party.
- (h) subject to approval by the Authority and in compliance with applicable SLD Charter, develop and implement policies and procedures facilitating the transfer, update or deletion of Domain Names.
- (i) submit an electronic copy of the Registry Database to the Authority or, at the Registry's election and expense, to a reputable escrow agent mutually approved by the Registry and the Authority at agreed intervals.
- (j) provide all licensed Registrars with access to the Registry Database in accordance with provisions of the Charter and Registrar Agreement.
- (k) be solely responsible for managing its relationships with Registrars, including, with the approval of the Authority, developing, enhancing, maintaining and implementing the Charter and Registrar Agreement. For the avoidance of doubt, a Registry may only amend or vary the terms of the SLD Charter or Registrar Agreement with the prior approval of the Authority.
- (l) meet any technical and other operational standards set by the Authority from time to time, including the implementation of new technologies and advances in Registry operations.
- (2) Subsequent to being granted a License but before commencing the Registry Services, each Registry must submit to the Authority a draft copy of its Registrar Agreement. The draft Registrar Agreement must:

- (a) be consistent with these Regulations, policies and procedures of the Authority, and Charter;
 - (b) be approved by the Authority, which will be entitled to withhold its approval where the Registrar Agreement or certain provisions thereof are found to be inconsistent with the Regulations, policies and procedures of the Authority, and the Charter.
 - (c) outline the specific terms and conditions governing the relationship between the Registry and the Registrar in accessing the Registry Database, which must include:
 - (i) the terms applicable to the Registrar accessing the Registry Database;
 - (ii) the obligations of both parties in relation to the Registry Database;
 - (iii) the supported protocols and software which must be used by Registrars in registering Domain Names; and
 - (iv) the Registry's specific licence conditions applicable to the Registrars use, in terms of these Regulations, of any licensed products and software.
- (3) A Registry must indemnify the Authority from all of the Registry's dealings with Registrars.

CHAPTER 5

FEES

11. Determination of fees

- (1) The Authority shall, in consultation with interested parties, determine the Fees referred to in regulation 12 of these Regulations.
- (2) The Fees determined in accordance with regulation 12(1) shall not come into force until such time as they are published on the Authority's website.
- (3) The Authority may, after consultation with interested parties, revise the Fees payable in terms of regulation 12.
- (4) Where there is a revision of Fees as contemplated in regulation 11(3), such a revision shall be published on the Authority's website, and shall not come into force until a period of three (3) months has passed from the date of publication on the Authority's website.

12. Licensing fees

- (1) An Applicant shall pay the Authority a non-refundable application fee on or before the date of lodging an Application with the Authority.
- (2) A Licensee shall pay the Authority an annual renewal fee on or before the anniversary of the Authority having granted the Licensee a Licence.
- (3) The annual renewal fee shall be allocated to, *inter alia*, the costs related to the Authority's administration of the .ZA namespace and the costs for the provision of compliance audits of the .ZA namespace.
- (4) Late payments of Fees due in terms of regulation 12(2) shall accrue interest at the rate prescribed in the Prescribed Rate of Interest Act 55 of 1975 or as prescribed in an equivalent Act of Parliament that replaces the Prescribed Rate of Interest Act 55 of 1975.

13. Payment of Domain Name transaction license fees

- (1) The Authority shall, after consultation with interested parties, determine maximum registration and renewal fees a Registry may charge Registrars.

- (2) The Authority shall require a Registry to pay a fixed fee determined by the Authority from each confirmed Domain Name registration and renewal transaction, and to pay such fee to the Authority or its appointed agent. The Authority, or the Registry subject to the approval by the Authority, may develop and implement policies and procedures clarifying Domain Name registration processes, including confirmation of registrations.

14. Payment of monies due to the Authority

Any money that is payable to the Authority in terms of these Regulations must-

- (1) be paid by way of an electronic transfer or via a direct deposit into the Authority's bank account or bank account of its appointed agent;
- (2) be paid on or before the day the money is due in terms of these Regulations;
and
- (3) be accompanied by documentary proof of payment.

CHAPTER 6

MONITORING AND REVOCATION

15. Monitoring

- (1) The Authority may, from time to time, itself or through appointed agents, conduct audits and perform tests on the infrastructure and processes of a Registry in order to ensure compliance with these Regulations and with any other technical, operational and other regulations, standards and procedures of the Authority.
- (2) The Registry shall, when requested to do so by the Authority -
 - (a) provide the Authority, or its appointed agents, with such assistance as may be requested by the Authority, or its appointed agents;
 - (b) respond, in writing, to any queries which may be submitted to the Registry by the Authority, or its appointed agents; and
 - (c) provide the Authority, or its appointed agents, with such information, resources and/or data in the Registry's possession or control as may be reasonably requested by the Authority, to the extent that the information, resources and/or data is required for the purposes of conducting the audits and/or tests contemplated in regulation 15(1).

16. Surrender of Licence

- (1) The Registry may, on notice to the Authority, surrender the Licence issued to it in terms of these Regulations.
- (2) The notice referred to in regulation 16(1) shall be submitted no less than twenty (20) Business Days prior to the date on which the Registry intends to surrender of its Licence and cease to provide the Registry Services.
- (3) A Registry that intends to surrender its Licence must take appropriate steps to inform the affected Registrants and Registrars of the cessation of the Registry Services.
- (4) Upon receipt of the notice referred to in regulation 16(1), the Authority may stipulate the steps which must be taken by the Registry prior to surrendering

its Licence.

- (5) The Registry whose Licence is to be surrendered shall pay to the Authority any outstanding Fees which may be due and payable by the date on which the surrender of the Licence is to take effect.
- (6) All amounts payable in terms of regulation 16(5) shall be paid to the Authority within twenty (20) Business Days from the date on which the services provided by the Registry in terms of the Licence are discontinued, except where the Authority, upon request by the Registry, extends the time period.

17. Revocation of Licence

- (1) The Management Committee may, after a proper investigation in terms of regulation 18(2), revoke a Licence if-
 - (a) the Management Committee determines that there was a material misrepresentation, material inaccuracy, or materially misleading statement, at the time of its Application or at any time prior to the Authority having granted the Licence;
 - (b) a Registry breaches a material provision of these Regulations or any other technical, operational and other regulations, standards and procedures of the Authority and fails to remedy such breach after receiving written notice from the Authority instructing the Registry to remedy such breach;
 - (c) a Licensee breaches a material provision of any Charter which is applicable to the Licensee, and fails to remedy such breach after receiving written notice from the Authority instructing the Licensee to remedy such breach;
 - (d) a Registry conducts itself in a manner that the Management Committee considers to threaten the stability, security or operational integrity of the Domain Name System;
 - (e) a Registry is, for any reason whatsoever, no longer reasonably capable of providing Registry Services; or

- (f) the Management Committee determines that it is in the public interest to revoke the Licence.
- (2) A Registry whose License is revoked in terms of this regulation 17 shall, within twenty (20) Business Days of having its license revoked, be responsible for making arrangements that ensure continued use of Domain Names by Registrants. In addition, the Registry shall be required to perform all actions that are necessary to ensure the continued, effective provision of the Registry Services. The Authority may, in its sole and absolute discretion, assist the Registry in making such arrangements.

18. Investigation

- (1) The Authority may, at its own instance, or on the referral of a complaint in terms of regulation 18(2), investigate and make a finding in terms of this regulation 18.
- (2) A person who has reason to believe that a Registry is in breach of the Regulations and/or the Act may lodge a complaint with the Authority upon becoming aware of the alleged non-compliance.
- (3) In the course of its investigation in terms of this regulation 18 the Authority must:
 - (a) provide the Registry with -
 - (i) a copy of the complaint where a complaint has been lodged;
and
 - (ii) a notice setting out the nature of the alleged breach;
 - (b) afford the Registry a period of ten (10) Business Days to respond to the alleged breach in writing.
- (4) If, after the investigation in terms of regulation 18, the Authority decides to revoke a Licence, the Authority must:
 - (a) notify the Registry of its decision;
 - (b) notify all Registrants and Registrars affected by the revocation at least five (5) Business Days prior to the date of revocation;
 - (c) publish a notice of the revocation on the Authority's website at least

five (5) Business Days prior to the date of the revocation; and

(d) notify the Registry of the procedure outlined in regulation 20.

(5) The Authority must not revoke a License unless arrangements have been made to ensure continued use of Domain Names by Registrants.

19. Appeal

(1) A Registry shall have the right to appeal any decision made by the Authority in terms of regulation 18 by submitting, within ten (10) Business Days of the decision, a detailed notice of appeal specifying the grounds and reasons for appealing the decision.

(2) All appeals shall be addressed to the Board.

(3) The Board shall, after receiving the notice of appeal, consider the decision of the Management Committee having regard to the information submitted by the Registry in the notice of appeal and shall, within forty (40) Business Days of receiving the notice of appeal, notify the Registry of its decision in relation to the appeal.

(4) The Board may, if it deems it necessary in its sole discretion, afford the Registry an opportunity to present oral evidence to the Board in respect of the notice of appeal.

(5) The Board shall, in its sole discretion, either reject or uphold the Registry's appeal.

20. Liability of the Authority

No decision to suspend or revoke a Licence, which is taken *bona fide* in accordance with the provisions of these Regulations, shall give rise to a claim against the Authority for any compensation or damages, or for the refund of any deposit, application Fee, or other monies paid to the Authority.

21. Non-compliance

A Registry shall be responsible for any and all damages and/or costs of repairing any harm to .ZA namespace or the Domain Name System, which arises as a result of the unlawful and/or negligent conduct of the Registry in carrying on the

business for which it is licensed.

CHAPTER 7

SHORT TITLE AND COMMENCEMENT

22. These Regulations will come into effect on a date to be determined by the Authority and published in the Government Gazette.
23. These regulations are called .ZA Registry Licensing Regulations.

SCHEDULE A

Registry Licensing Application Form

1. APPLICANT'S DETAILS					
Full name of company:					
Contact person:					
Designation:					
Company's registration number:					
Income tax number:					
VAT number:					
Postal Address:					
Physical Address:					
Telephone number:		Fax number:		Mobile number:	
E-mail:					
Website address:					

2. ADMINISTRATIVE CONTACT	
Full names:	
Telephone number:	
Fax number:	
E-mail address:	
Postal address:	
Physical address:	

3. LEGISLATIVE COMPLIANCE						
3.1 Broad – Based Black Economic Empowerment (BBBEE)						
Does the applicant comply with BBBEE Act?				Yes	No	
If no, please explain why:						
If yes, please supply the following information:						
BEE owner/s	% BEE owned	HDI Directors	Race	HDI Managers	Race	No. of non-managerial HDI employees

NB: Also provide certified copies of BBBEE compliance-related documents.)

4. PAYMENT OF APPLICATION FEES	
An applicant for a .za registrar license must pay the prescribed application fee to the Authority using the bank details below. <i>Please attach proof of payment.</i>	
Account name:	The .za Domain Name Authority
Bank:	ABSA
Account no:	4067341378
Branch:	Brooklyn, Pretoria
Branch no:	335-345