

FREQUENTLY ASKED QUESTIONS

1. To which disputes does the HKDNR Domain Name Dispute Resolution Policy apply?

Answer: The HKDNR Domain Name Dispute Resolution Policy applies to .hk domain names disputes.

2. If one wishes to file a complaint regarding a registered .hk domain name, what kind of actions can be taken?

Answer: To file a Complaint regarding a registered .hk domain name, one should file a Complaint with an Arbitration Dispute Provider appointed by HKDNR in accordance with the HKDNR Domain Name Dispute Resolution Policy, the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure, and the Supplemental Rules of the Arbitration Dispute Provider. For the time being, the sole Arbitration Dispute Provider is the Hong Kong International Arbitration Centre (HKIAC).

3. Who is entitled to commence an arbitration proceeding under the HKDNR Domain Name Dispute Resolution Policy and the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure?

Answer: Any person or company is entitled to commence such a proceeding.

4. On what grounds can an arbitration in regard to a .hk domain name dispute be based?

Answer: Paragraph 4(a) of the HKDNR Domain Name Dispute Resolution Policy states that the Complainant commencing a registered .hk domain name arbitration proceeding must prove the following:

- i. the .hk domain name in question is identical or confusingly similar to a trademark or service mark in Hong Kong to which the Complainant has rights; and
- ii. the person or company who is the registered holder of the .hk domain name in question has no rights or legitimate interests in respect of the domain name; and
- iii. the registered .hk domain name in question has been registered and is being used in bad faith.

It should be noted that in order to succeed in an arbitration proceeding under the HKDNR Domain Name Dispute Resolution Policy, the Complainant must prove that all three (3) elements are present.

5. What constitutes "bad faith" in the registration and use of a registered .hk domain name?

Answer: Paragraph 4(b) of the HKDNR Domain Name Dispute Resolution Policy provides several examples showing evidence of bad faith. It is important to note that these examples are only indicative and do not constitute an exhaustive list:

- i. circumstances indicating that the person or company who or which registered or acquired the .hk domain name in question, did so primarily for the purpose of selling, renting or otherwise transferring the .hk domain name to the Complainant, who is the owner of the relevant trademark or service mark or to a competitor of that Complainant; they did so for valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain name involved; or
- ii. the registrant registered the .hk domain name in question in order to prevent the owner of the relevant trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or
- iii. the registrant registered the .hk domain name in question primarily for the purpose of disrupting the business of a competitor; or
- iv. by using the .hk domain name in question, the registrant intentionally attempted to attract, for commercial gain, Internet users to the registrant's website or other online location by creating the likelihood of confusion with the Complainant's mark as the source, sponsorship, affiliation, or endorsement of the registrant's web site or location or of a product or service on the registrant's web site or location.

The final decision as to whether bad faith is present or not is left to the determination of the Arbitration Panel dealing with the arbitration proceeding in question.

6. What is the role of the Hong Kong International Arbitration Centre in the .hk domain name dispute resolution process?

Answer: The HKDNR has appointed the Hong Kong International Arbitration Centre (HKIAC) as the sole dispute resolution provider for .hk domain name disputes. As such, the HKIAC currently administers the arbitration proceedings brought under the HKDNR Domain Name Dispute Resolution Policy in accordance with the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure and also the HKIAC's own Domain Name Dispute Supplemental Rules.

7. What are the steps in a .hk domain name arbitration process?

Answer: Generally, the steps are as follows:

- i. The Complainant files a Complaint with the Hong Kong International Arbitration Centre (HKIAC);
- ii. The HKIAC notifies the registered holder of the .hk domain name in question of the Complaint and sends a copy of the Complaint to the registered holder;
- iii. The registered holder of the .hk domain name in question files a Response;
- iv. The HKIAC selects the Arbitration Panel of one (1) or three (3) persons, **depending on the circumstances of the case**, who will then make a determination regarding the dispute;
- v. The Panel determining the arbitration renders its decision;
- vi. If the decision of the Arbitration Panel requires that the .hk domain name in question be cancelled or transferred, the decision is implemented.

For additional information, please refer to the Flow Chart of Proceedings.

8. How long should a .hk arbitration proceeding take?

Answer: Under normal circumstances, after a Complaint is duly filed with the Hong Kong International Arbitration Centre, the Arbitration Panel should notify the Parties and the HKDNR of the decision within 60 days.

9. In what language is a .hk arbitration proceeding conducted?

Answer: Article 11 of the HKIRC Domain Name Dispute Resolution Policy Rules of Procedure (the "Rules of Procedure") states that, unless otherwise agreed by the Parties, the language of the arbitration proceedings shall be in English for English .hk domain names, and in Chinese for Chinese .hk domain names or .香港 domain names, subject always to the authority of the Arbitration Panel to determine otherwise, with consideration for all circumstances of the arbitration proceeding. In addition, an Arbitration Panel may order that any documents submitted in a different language than the language of the arbitration proceeding shall be accompanied by a translation in whole or in part into the language of the arbitration proceeding.

10. What is the cost of a .hk domain name arbitration proceeding?

The cost of the arbitration proceedings is set by the Domain Name Dispute Resolution Provider and approved by the HKDNR. The Hong Kong International Arbitration Centre (HKIAC) is the sole Domain Name Dispute Resolution Provider appointed by the HKDNR regarding .hk domain name disputes; thus, the HKIAC's fee schedule applies.

According to Article 15 of the HKIAC's Domain Name Dispute Supplemental Rules, the fees for an Arbitration Panel consisting of one (1) Panelist are HK\$10,000, including HK\$5,000 for the Panelist. The fees for an Arbitration Panel consisting of three (3) Panelists are HK\$20,000 including HK\$15,000 for the Panelists. If any deficiencies occur in the Complaint an additional HK\$2,000 shall be paid by the Complainant. Normally, the Complainant is responsible for paying all the fees, unless the Respondent (i.e. the holder of the .hk domain name which is in dispute) chooses to have the arbitration heard by an Arbitration Panel of three (3) Panelists whereas the Complainant has chosen to have the Complaint decided by one (1) Panelist, in which case the fees are to be shared equally between the Parties.

It should also be noted, that according to Paragraph 18(d) of the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure, in the exceptional circumstances that an in-person hearing is required, additional fees will apply. HKIAC will establish the amount of these fees after consultation with the Parties and the Arbitration Panel.

The fees referred to above do not include any payments that a Party may or may not have to pay to a lawyer or other representatives representing such Party, which is a matter entirely for such Party.

11. How are fees of a .hk arbitration proceeding paid?

Answer: According to Article 15(3) of the Hong Kong International Arbitration Centre's Domain Name Dispute

Supplemental Rules, fees are to be paid to the Hong Kong International Arbitration Centre (HKIAC) free of any bank charges, transfer fees or any withholdings, in Hong Kong Dollars (HKD) only, by way of cheque, draft, or telegraphic transfer. Cheques or drafts are to be made payable to "Hong Kong International Arbitration Centre".

Telegraphic transfers are to be made as follows:

Account Name: Hong Kong International Arbitration Centre

Account Number: 004 567 190897 001

HSBC

1 Queen's Road Central

Hong Kong

12. Must a Party be represented by a lawyer in a .hk arbitration proceeding?

Answer: No. Although it is not required, a Party might find it useful to engage the services of a legal advisor. A Party may represent itself or be represented by any person that the Party chooses.

13. Can a Complaint include more than one disputed .hk domain name?

Answer: No. According to Paragraph 3(c) of the HKDNR Domain Name Dispute Resolution Policy, each disputed .hk domain name must be the object of a separate Complaint.

14. Will the HKDNR be involved in any .hk domain name arbitration proceeding?

Answer: No. According to Paragraphs 4(g) and 5 of the HKDNR Domain Name Dispute Resolution Policy, the HKDNR will not participate in the administration or conduct of any .hk domain name arbitration proceeding nor will the HKDNR

be liable to a result of a decision rendered by an Arbitration Panel. The HKDNR is not to be **referred to** as a party or otherwise in any arbitration proceeding.

That said, the HKDNR will implement a decision of an Arbitration Panel that calls for the cancellation or the transfer of a .hk domain name.

15. If a Complainant duly commences a .hk arbitration proceeding, can the Complainant still go to court in Hong Kong?

Answer: Generally, under the Arbitration Ordinance (Chapter 609), if a Party has agreed to submit a dispute to arbitration in Hong Kong, the courts in Hong Kong will not intervene except in very limited and exceptional cases set out in the Arbitration Ordinance.

16. Will a Party against whom a .hk arbitration proceeding is filed have recourse in Hong Kong courts?

Answer: Similar to the previous question, under the Arbitration Ordinance (Chapter 609), if a Party has agreed to submit a dispute to arbitration in Hong Kong, the courts in Hong Kong will not intervene except in very limited and exceptional cases set out in the Arbitration Ordinance.

17. Where can I obtain information about the registered holder of a .hk domain name?

Answer: Information on registered .hk domain name holders can be obtained by clicking on WHOIS on the Hong Kong Domain Name Registration Company Limited (HKDNR)'s website at www.hkdnr.net.hk.

18. What happens if the Hong Kong International Arbitration Centre (HKIAC) deems a Complaint deficient in its Compliance Review?

Answer: According to Article 6 of the HKIAC's Domain Name Dispute Supplemental Rules, if the HKIAC determines that there are deficiencies in the Complaint, the HKIAC shall notify the Complainant of such deficiencies and the Complainant shall remedy such deficiencies within five (5) calendar days; additionally, according to Article 15(2) of the HKIAC's Domain Name Dispute Supplemental Rules, at the time the Complainant submits the correction of the deficiencies, the Complainant must pay an additional fee of HK\$2,000 to the HKIAC.

19. Must a Party respond to a .hk domain name dispute that has been filed at the HKIAC?

Answer: Yes. Under the terms of the Registration Agreement between the HKDNR and the registered holder of a .hk domain name, the registered holder will have already agreed to participate in any .hk domain name arbitration proceeding in question.

20. What happens if a Response is not filed on time or at all?

Answer: According to Paragraph 5 of the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure and Article 7 of the Hong Kong International Arbitration Centre's Domain Name Dispute Supplemental Rules, a Party who is the registered holder of a .hk domain name against whom a Complaint is filed must respond within twenty (20) calendar days of the date the HKIAC transmits the complaints to such Party. In the event that such person, otherwise known as the Respondent, does not file a Response (including the payment of any relevant fees) within the said twenty (20) calendar days, the Respondent will be considered to be in default and the HKIAC will proceed to appoint the Arbitration Panel for the case informing the Arbitration Panel of the Respondent's default. The Arbitration Panel will proceed to decide the case based on available information and the Arbitration Panel may draw such inferences as it deems appropriate from the Respondent's failure to file a Response in a timely manner.

21. How is an Arbitration Panel established?

Answer: Arbitration Panels are composed of either one (1) or three (3) Panelists. The Hong Kong International Arbitration Centre (HKIAC) maintains a list of Panelists who the HKIAC considers to be independent, reputable, knowledgeable, experienced, impartial and suited to decide .hk domain name disputes. The HKIAC selects the Panelists to sit on an Arbitration Panel on a case-by-case basis in light of the following criteria: the nature of the dispute, the availability of the Panelist(s), the identity of the Parties, the independence and impartiality of the Panelist(s), any stipulations in the relevant Registration Agreement and any suggestions made by the Parties themselves in accordance with Paragraph 6 of the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure.

An Arbitration Panel is appointed after the date on which a Response is duly filed or, if the Response is not filed in a timely manner, after the last date the Response was supposed to have been filed. Prior to an appointment, a proposed

Panelist must declare in writing to the Parties and the HKIAC any circumstances which could give rise to any justifiable doubt as to the Panelist's impartiality or independence or prevent a prompt resolution of the dispute in question. Unless the Parties otherwise agree, no person shall serve as a Panelist in a dispute where that person has any interest which, if known to a Party, might lead the Party to doubt the Panelist's impartiality or independence.

According to Article 9(4) of the HKIAC's Domain Name Dispute Supplemental Rules, a Party may challenge a Panelist's impartiality or independence by filing a written request to the HKIAC within seven (7) calendar days of the date of receipt by such Party of the notice of appointment of the Panelist in question. The written request must state the circumstances likely to give rise to justifiable doubt as to the relevant Panelist's impartiality or independence, together with specific reasons. Therefore, the HKIAC, in its sole discretion, shall decide whether such doubts are justified, and if the HKIAC finds that they are, **the Panelist against whom challenge was made shall be removed by the HKIAC and replaced with another Panelist from the HKIAC's list of Panelists..**

22. How long does an Arbitration Panel have to render a decision in a .hk arbitration proceeding?

Answer: According to Paragraph 15 (b) of the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure, in the absence of exceptional circumstances as determined by an Arbitration Panel in its sole discretion, an Arbitration Panel shall forward to the Hong Kong International Arbitration Centre (HKIAC) the Arbitration Panel's decision on a Complaint within twenty-one (21) calendar days of the appointment of the Arbitration Panel. The HKIAC shall communicate the decision of an Arbitration Panel to the Parties and the HKDNR within three (3) calendar days of the HKIAC's receipt of the decision.

23. What kind of decision can an Arbitration Panel make in a .hk domain name arbitration?

Answer: A decision by an Arbitration Panel must be in writing and the kinds of decisions an Arbitration Panel may render are limited. An Arbitration Panel might decide in one of two ways: (a) that the Complaint is not justified, in which case the existing registered .hk domain name holder shall be entitled to retain the .hk domain name in question; or (b) the Arbitration Panel may decide that the Complaint is justified in which case the Arbitration Panel will order that the .hk domain name in dispute should be cancelled or transferred to the Party which brought the Complaint.

It should be noted that if an Arbitration Panel finds that a Complaint was brought in bad faith, the Arbitration Panel is required to state this in its decision and to declare the Complaint constituted an abuse of process.

An Arbitration Panel may not make monetary awards or awards relating to costs, including but not limited to lawyer's fees and costs.

24. Is it possible to challenge a decision regarding a .hk domain name?

Answer: Decisions made by an Arbitration Panel regarding a .hk domain name are final and binding and may not be appealed to a Court in Hong Kong, except in very exceptional circumstances as set out in the Arbitration Ordinance (Chapter 609).

25. How does an Arbitration Panel carry out a decision regarding a .hk domain name?

Answer: Paragraph 4(j) of the HKDNR Domain Name Dispute Resolution Policy states that if an Arbitration Panel decides that a .hk domain name registration should be cancelled or transferred, the HKDNR will wait ten (10) business days after it is notified by the Hong Kong International Arbitration Centre of the Arbitration Panel's decision following which the HKDNR will make the relevant cancellation or transfer.