

ADR FINANCIAL ASSISTANCE

APPLICATION PROCEDURE AND ELIGIBILITY GUIDELINES

INTRODUCTION

This document has been prepared by the .za Domain Name Authority to explain the application process, eligibility requirements, and guidelines for the evaluation of ADR financial assistance applications.

1. PURPOSE OF ADR FINANCIAL ASSISTANCE

The purpose of ADR financial assistance is stipulated by Section 34(5) of the ADR Regulations as follows:

“Upon receipt of the fees required in terms of this regulation, the provider must immediately pay 10% of the fees to the Authority, which fees the Authority must use exclusively to fund other complainants and registrants seeking financial assistance”.

The ADR financial assistance is only open to those complainants and registrants (i.e. persons who have registered domain names) who require such assistance. “Complainants” and “registrants” can either be natural or legal entities.

2. PRINCIPLES GUIDING ALLOCATION OF ADR FINANCIAL ASSISTANCE

The following are key principles which should guide the consideration (by the Authority) of ADR financial assistance applications:

(a) Restriction to South African persons

Although the Regulations do not put any restrictions on who should be considered for the financial assistance, the Authority should limit financial assistance to those persons who are South African citizens (in the case of natural persons) and, in the case of legal entities, to those entities which are registered for business and carry out business in South Africa. This restriction should be enforced through the inspection of relevant documents such as identity documents, company registration, and tax compliance.

(b) Affordability

In determining whether or not an applicant should be granted financial assistance, the Authority should determine if the applicant is not in a position to afford paying the ADR fees on their own. There should be a presumption that an applicant which is a profit-making legal entity is able to afford ADR fees, and the onus should be on the applicant to disprove the presumption. The key determining factor should be a show of “good cause” by the applicant.

(c) Proof of abusive or offensive registration

The Regulations stipulate that a co.za domain name dispute should be based on either abusive or offensive registration. Generally, the complainant must show that the respondent (registrant) has taken an unfair advantage of its trademark or intellectual property (i.e. abusive registration) or has registered a domain name that is discriminatory against a certain class of people (i.e. offensive registration).

In assessing an application for financial assistance, the Authority will determine if the dispute to be lodged is based on abusive or offensive registration. In doing so, the Authority may consult accredited ADR providers. An application for a dispute which is not based on abusive or offensive registration will be unsuccessful.

(d) Limitation to co.za sub-domain names

The ADR financial assistance should be limited to co.za domain name disputes, as the Regulations are likewise limited. In the event the Regulations are extended in the future to cover other .za sub-domains, financial assistance should also be extended to cover domain names in those sub-domains.

(e) Consideration by a single adjudicator

Each applicant who seeks to lodge a dispute should undertake to have their dispute resolved by a single adjudicator. In the case the respondent chooses a three member adjudication panel, the Authority should limit its contribution to 50% of the total ADR fees.

Where the applicant seeks to defend a dispute, it should submit to a single adjudicator panel, unless the party lodging a dispute (i.e. applicant) chooses a three member panel.

(f) Appeal of adjudicator decision

Assistance for appeals should be limited to 50% of the total appeal costs to ensure availability of ADR financial assistance to as many applicants as possible. There should, however, be a rebuttable presumption that a party that manages to pay its ADR fees during the initial dispute resolution is able to pay appeal costs.

(g) Consideration based on documentary submissions

In considering applications, the Authority should make decisions based on the documents submitted by applicants. No in-person or telephone hearings shall be done.

(h) Public interest

The Authority should consider public interest in allocating financial assistance. A good example of “public interest” will be when an applicant wants to dispute a registered domain name based on the ground that it is an offensive name. Public interest should also be used in determining allocation for appeal purposes.

(l) ADR fee deductions

The accredited service providers must be required, as stipulated by the ADR Regulations, to pay 10% of the ADR fees paid by an applicant who has been allocated ADR financial assistance.

(j) Professional fees

The ADR financial assistance is aimed at assisting those parties interested in lodging domain name disputes, but cannot afford the ADR fees. In exceptional circumstances, depending on the availability of funds, financial assistance may be granted to pay for professional fees, upon good cause shown, to be used for legal consultation relating to lodging domain name disputes.

3. APPLICATION PROCEDURE

Applications for ADR financial assistance should be lodged in the following manner:

3.1 Submission of ADR application form

The “ADR financial assistance form” must be filled in, signed and submitted to the Authority by registered post to:

.za Domain Name Authority, P O Box 549, Halfway House, 1685, South Africa.

It can also be delivered by hand to the Chief Executive Officer of the Authority at:

.za Domain Name Authority, No. 44 Grand Central Blvd, Sanofi House Halfway house, Midrand, Gauteng.

The form can also be emailed to:

adrfinancialassistance@zadna.org.za

The form may be downloaded from the Authority’s website and hard copies will be available from the Authority’s offices. The form must be accompanied by all the required documents.

3.2 Required information

Juristic persons should supply the following primary information:

- Statements of income, assets & liabilities
- Audited financial statement for the past financial year (not applicable to close corporations)
- Last 6 months bank statement
- Valid tax clearance certificate
- Proof of compliance with relevant company legislation
- Sworn affidavit confirming inability to pay ADR fees
- Proof of registration in South Africa

Natural persons should supply the following basic information:

- Proof of income for the past year (including salary slips)
- Proof of income of spouse (in the case of married people)
- Last 6 months bank statement
- Payment of tax (or arrangement with SARS regarding such)
- Proof of South African citizenship (e.g. ID document)
- Sworn affidavit confirming inability to pay ADR fees

The required information may vary depending on the nature of each applicant and its activities. Documents which are submitted as copies should be certified by a Commissioner of Oaths.

4. PRELIMINARY EVALUATION

4.1 Completeness of the application

Upon receiving the application form, the CEO shall do a preliminary evaluation of the application to determine if the form has been correctly filled-in and if all the required information has been submitted.

Whatever the result of the preliminary evaluation, the CEO shall send a written acknowledgement of the application within five (5) working days of receiving the application. The acknowledgement shall indicate any outstanding information, which information should be submitted within twenty (20) working days after the acknowledgement is received, unless an extended deadline is requested in writing.

Failure to meet the deadline should result in the application presumed as having been withdrawn. An acknowledgement should be presumed to have been received after 3 days of the letter having been posted or delivered.

An incomplete application should not be regarded as having been submitted until all the required information is received by the Authority.

4.2 Qualification of the application

The CEO should ensure that the disputed domain name is registered within the co.za sub-domain. If this is not the case, the CEO should notify the applicant that its application cannot be considered for funding.

5. EVALUATION OF THE APPLICATION

5.1 Consideration by ADR Committee

Once all required documentation is submitted, the CEO should convene the ADR Committee of the Board of the Authority, which, on behalf of the Board, should decide the application within 20 working days after a complete application is received. The Committee may also decide applications through each member making written submissions to the CEO.

5.2 Determination of inability to “afford ADR fees”

In determining each application, the key factor which the Committee should determine is the evidence of a lack of ability to afford ADR fees, and the Committee should consider both quantitative and qualitative factors using the submitted information.

It is of critical importance that the ADR financial assistance should not be abused in any manner. The Authority has a responsibility to use the money to fund deserving applicants. As a result, applications should be closely scrutinized and this may involve a prolonged process of getting additional evidence before it approves financial assistance.

It is the responsibility of each applicant to provide all required information, and to cooperate with the Authority in submitting additional information if requested to do so. Failure to do so within stipulated timelines should lead to the presumption that the application has been withdrawn.

5.3 Existence of abusive or offensive registration

The Committee should determine the existence of a prima facie abusive or offensive registration. In determining this, the Authority may secure legal advice, and may choose to obtain it from one of the accredited providers. Such referral will mean that the 20 days' deadline should be extended to accommodate the securing of legal advice.

If the dispute is not based on abusive or offensive registration, the application will not succeed.

5.4 Communication of successful decision

Once decision is made, the CEO should notify the applicant of the outcome in writing within 3 working days. Such outcome should include, in the case of a successful application, the process of financing the dispute. The Committee may decide to provide partial assistance where it is convinced that the applicant has some ability, though limited, to contribute to the payment of ADR fees.

It should be the responsibility of the applicant to choose an accredited provider and lodge the dispute with the provider. Such lodgment should include a copy of the Authority's letter indicating its decision to finance the applicant's dispute.

5.5 Communication of unsuccessful decision

In the case of the application being unsuccessful, the CEO should provide written reasons to the applicant. The unsuccessful applicant should be free to re-apply.

6. APPEALING COMMITTEE'S DECISION

An unsuccessful applicant should be free to appeal the decision of the Committee, and should do so by submitting the "appeal form" to the CEO within 10 working days of having received the decision of the Committee. The appeal should be considered by the Board at its next meeting.

In considering the appeal, the Board should consider the reasoning of the Committee. The Board should not consider any new evidence in deciding the appeal. Where an applicant wants to submit new documentary evidence after the Committee's decision, a new application must be submitted.

7. APPEAL DECISION

The decision of the Board should be provided in writing to the applicant by the CEO within 3 working days after the decision is made. Such communication should be accompanied by reasons behind the Board's decision.

8. LODGING A DISPUTE AFTER SUCCESSFUL APPLICATION

Once the Authority notifies the applicant that its application for financial assistance has been successful, the applicant should lodge the dispute within 40 working days of being notified of the success of its application. Failure to do so should result in the lapse of funding, and a new application will have to be made.

9. PAYMENT OF FINANCIAL ASSISTANCE

ADR financial assistance should only be paid into the bank account of the accredited ADR provider selected by the successful applicant. Under no circumstances should the money be paid into the bank account of the applicant.

OBTAINING INFORMATION

Additional information about the .za ADR financial assistance can be obtained by contacting the Authority at telephone number +27 (0) 10 020 3910, fax numbers +27 (0) 10 020 3919 or at adrfinancialassistance@zadna.org.za.
