

GAC Advice Response Form for Applicants



The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV of the [GAC London Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your [CSC Portal](#) with the Subject, “[Application ID] Response to London GAC Advice” (for example “1-111-11111 Response to London GAC Advice”). All GAC Advice Responses to the GAC London Communiqué must be received no later than 23:59:59 UTC on 04-August-2014.

Please note: This form will be publicly posted.

Respondent:

Applicant Name	Asia Spa and Wellness Promotion Council Limited
Application ID	1-1309-81322
Applied for TLD (string)	SPA

Response:

Dear ICANN Board, NGPC and GAC,

We welcome the GAC advice on .SPA (<https://gacweb.icann.org/display/GACADV/2014-06-25+.spa>) included in the GAC London Communiqué, and appreciate the opportunity to respond.

First and foremost, we urge ICANN to follow the Applicant Guidebook (AGB) in its entirety and not just selectively in its consideration on the matter. The Asia Spa and Wellness Promotion Council (ASWPC) continues to patiently and diligently follow the new gTLD process as laid out in the AGB including fully respecting the provisions for government input and taking into account GAC Advices as the new gTLD process is implemented.

We also therefore look to ICANN to uphold the integrity of the new gTLD process and to respect the provisions for taking into account government input, especially for the consideration of geographical and city names requiring government support or non-objection.

Both GAC advices on .SPA (<https://gacweb.icann.org/display/GACADV/2014-06-25+.spa> and <https://gacweb.icann.org/display/GACADV/2014-03-27-spa>) clearly state that “*the relevant parties in these discussions*” include the City of Spa.

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According to AGB:2.2.1.4.2, the determination of “*which governments are relevant*” to a geographic name requiring government support (or non-objection) is based “*on the inputs of the applicant, governments, and its own research and analysis.*”

AGB: 2.2.1.4 further stipulates that “*applied-for gTLD strings will be reviewed according to the requirements... regardless of whether the application indicates it is for a geographic name.*”

Given the above, and the fact that the ICANN Board New gTLD Program Committee (NGPC) has accepted the GAC Advice on .SPA, it is therefore only reasonable to understand that the acceptance of the GAC Advice substantiates the criteria set out in the AGB for geographic name requiring government support or non-objection.

In the discussions and finalization of the AGB, substantial discussions were had and inputs provided by the community and the GAC culminated eventually to what we currently have for this round of new gTLD implementation. Most importantly, the AGB explicitly mentions that:

“City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.”

More specifically, the AGB specifically recognizes that some city names may also be generic terms or brand names, yet that does not automatically mean no protection is afforded to relevant governments. The above clause also explicitly states that “*the process [i.e. the AGB new gTLD process] does provide a means for cities and applicants to work together where desired.*” Given the GAC advice, which identified the City of Spa as a relevant party and the fact that the City of Spa has explicitly expressed their desire to work together with the applicants, it is only reasonable for ICANN to uphold that the process does actually provide the means for such protection.

Finally, AGB:2.2.1.4.2 also specifies that:

“An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

(a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

(b) The applied-for string is a city name as listed on official city documents.”

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The fact that the TLD string “.SPA” *is a city name as listed on official city documents* is apparent (<http://www.villedespa.be> | <http://www.spatourisme.be>). Furthermore, the letters from the Deputy Prime Minister, Mr. Johan vande Lanotte on July 1, 2013 (<http://www.icann.org/en/news/correspondence/lanotte-to-chehade-crocker-01jul13-en.pdf>) and March 20, 2014 (<http://www.icann.org/en/news/correspondence/lanotte-to-chehade-crocker-20mar14-en.pdf>) both clearly advised that *“The Belgian law of 26 June 2003 concerning abusive registration of domain names gives the town of Spa the right to appeal against an owner of a “.spa” domain name”*.

Regarding, *“(a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name”*, it is clear from applicant statements from BOTH remaining applications for .SPA that the applicant intends to use the TLD *“primarily for purposes associated with the city name”* (even if it is not for purposes associated with the city or its citizens):

ASWPC application (18a):

.spa is dedicated to the spa and wellness community

Donuts (Foggy Sunset, LLC) application (18a):

There are literally hundreds of different uses of the word SPA, broadly including day spas, dental spas, garden spas, medical spas, bath spas, hot tubs, soda fountains, etc.

Note that the listed *“different uses of the word SPA... day spas, dental spas...”* are all *“primarily for purposes associated with the city name”*, that is associated with springs with curative properties. Most importantly, unlike some generic words that are also city names and used for TLD strings such as “.tours”, “.orange” and “.pink”, where the etymological origin of the word pre-dates the naming of the city, the city of Spa is the etymological origin of the word itself and is the reason why we refer to any spring with curative properties as a “Spa” today. There is a significant heritage, cultural and governmental relevance between the use of the word spa and the city name Spa.

Therefore, despite the fact neither initiative targets the city itself nor its citizen, the AGB requirements are still met, especially given that the ICANN Board NGPC has accepted the GAC advice, which identified the City of Spa as a relevant party to the issue.

A more detailed account of the situation is included in the ASWPC response to the Singapore GAC Advice on Spa:

<http://newgtlds.icann.org/sites/default/files/applicants/08may14/gac-advice-response-1-1309-81322-en.pdf>

Finally, according to AGB: 2.3.1 Geographic Names Extended Evaluation, *“In the case of an application that has been identified as a geographic name... the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation... (at least 90 calendar days from the date of the notice).”*

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This will ensure that the integrity of the new gTLD process is not compromised, and continue to be transparent, timely, predictable, non-discriminatory and in accordance with the expectations set forth in the AGB. This will also be equitable for all applicants involved as it sets the condition at the same base requirement of non-objection (not necessarily support) from the relevant government in full accordance with the definitions stipulated in the AGB.

Given that the ICANN Board NGPC has accepted the GAC Advice on .SPA, the path forward is therefore very clear based on the AGB provisions. This assures that the ICANN Board does not have to “pick a winner” and all remaining applicants for the .SPA TLD has an equal opportunity to proceed in the process based fully on the AGB.

ASWPC looks to ICANN and the ICANN Board to respect the processes put forward in the AGB in its entirety in the consideration of .SPA as a geographical name requiring government support or non-objection (note that base on the AGB no “endorsement” is required), and move forward in full accordance with the AGB.

Sincerely,

William Ng
Chairman
Asia Spa and Wellness Promotion Council Limited (ASWPC)