

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, Annex I, and Annex II of the [GAC Beijing 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 GAC Advice” (for example “1-111-11111 Response to GAC Advice”). All GAC Advice Responses must be received no later than 23:59:59 UTC on 10-May-2013.

Respondent:

| | |
|--------------------------|-----------------------|
| Applicant Name | IG Group Holdings plc |
| Application ID | 1-1332-82635 |
| Applied for TLD (string) | .broker |

Response:

INTRODUCTION

We appreciate this opportunity to respond to the GAC's Beijing communiqué. Our comments are only in relation to paragraph IV and Annex 1 of the GAC's Beijing communiqué. We have applied for seven (7) gTLDs (.forex, .cfd, .trading, .nadex, .markets, .spreadbetting and .broker) and this response is applicable to each of those applications.

Our response is in two parts. Part one provides our comments about the nature and breadth of the advice proffered in paragraph IV and Annex 1 of the GAC's Beijing communiqué, the involvement of the GAC in agreeing the parameters of the gTLD application process during its creation and the role of the GAC at this stage of the gTLD application process and the detrimental consequences of accepting certain proposals in the GAC's Beijing communiqué. Part two relates to the impact of paragraph IV and Annex 1 of the GAC's Beijing communiqué to our applications.

PART ONE - THE ROLE OF THE GAC AND ITS COMMENTS

The GAC has in the Beijing Communiqué re-opened several debates on policy issues which were settled by the Internet community and the ICANN Board (Board) some time ago.

We are both disappointed and frustrated that the GAC has chosen to step beyond its agreed remit and issue the broad, generic advice covering all new gTLD applicants. Module 3 of the Applicant Guidebook, states that “the process for GAC Advice for New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.” We believe the provision of the Beijing communiqué covering all new gTLD applications constitutes a material change to the scope and purpose of

GAC Advice Response Form for Applicants



the advice which was to have been provided. We see no reason why the Beijing communiqué was not confined to targeting specific applications as originally (and reasonably) expected.

We, and no doubt others, are understandably aggrieved at the continued shifting landscape, one which is quite outside the conditions under which our application was submitted.

ANNEX I ADVICE OF THE BEIJING COMMUNIQUE

Annex I of the Beijing Communiqué under "Consumer protection, sensitive strings and regulated markets" attempts to create more categories of gTLDs than the Generic Names Supporting Organisation and subsequent policy, including through many versions of the applicant guidebook, has developed. The categories are "linked to regulated or professional sectors", "invoke a high level of trust from consumers" and "carry higher levels of trust". 13 classes of such gTLDs are identified by the GAC, involving approximately 200 strings. In relation to these, the GAC advises 5 categories of activity for the registry operator to compulsorily perform.

In Category 1 under "The GAC further advises the Board on page 10", "some" (a "limited subset") of the approximately 200 strings identified as Consumer protection, sensitive strings and regulated markets strings also fall into a category described as being "associated with market sectors which have clear and/or regulated entry requirements".

In Category 2 under "Restricted registration policies - restricted access" the erroneous claim is made that there is a "general rule that the gTLD space is operated in an open manner". This ignores all the chartered or sponsored gTLDs that have restrictive operating rules. .Post and .Museum are examples. The GAC appears to accept that this category may have certain restrictions on registration, which restrictions should be "appropriate for the kind of risks associated with the TLD". No indication is given of which new gTLDs are contemplated as being members of this category, nor the kind of restrictions. Undue preference in these cases is not to be given to any registrars – a matter already provided for in the Registry contracts, which prohibit preferential treatment, and in relation to all new gTLDs.

In Category 2 under "Restricted registration policies - exclusive access", approximately 61 strings are identified as being required to "serve a public interest goal" in order to be permitted to operate under exclusive access.

INVOLVEMENT OF THE GAC AND ICANN BOARD IN AGREEING THE CATEGORIES OF STRINGS AND THE APPLICANT GUIDEBOOK

The concept of special categories of gTLDs, that would have special rules applying to them, was a feature of many of the GAC communiqués and correspondence with the Board in 2009 and 2010. These were responded to by the Board in detail, and settled through successive iterations of the Applicant Guidebook, with periods of public comment, further analysis, further drafts, and further public comment. (For examples, see Letter from Peter Dengate Thrush to Heather Dryden dated 5 August 2010 and Letter from Peter Dengate Thrush to Heather Dryden 23 November 2010 at <http://www.icann.org/en/news/correspondence/2010>).

The Board held a special retreat in Trondheim in September 2010, at which resolutions on many of these issues were made (see

GAC Advice Response Form for Applicants



<http://www.icann.org/en/groups/board/documents/resolutions-25sep10-en.htm>). This led to further debate at the Cartagena Board meeting in December 2010, from which the GAC produced a “Scorecard” of remaining issues of concern (see <http://archive.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>).

A special inter-sessional negotiation between the Board and the GAC was set up and conducted in Brussels in February 2011. The Board produced a series of briefing papers in preparation for that meeting (see <http://www.icann.org/en/news/announcements/announcement-6-21feb11-en.htm>) and afterwards, the Chair wrote summarizing the progress on outstanding issues: see Letter from Peter Dengate Thrush to Heather Dryden dated 5 March 2011 at <http://www.icann.org/en/news/correspondence/2011>. In that letter, it was noted that the GAC Scorecard was broken down into 80 subparts, or items under discussion, noting progress achieved on many of them.

Further discussion on those items occurred at the San Francisco meeting in March 2011, with a further round of publication and public comment period leading up to the meeting in Singapore in June 2011. At that meeting, there was a further, final public forum on the new gTLD Program.

THE ROLE OF THE GAC AT THIS STAGE OF THE gTLD APPLICATION PROCESS AND THE DETRIMENTAL CONSEQUENCES OF ADOPTING THE GAC BEIJING COMMUNIQUE

The GAC was involved in and participated and contributed to all of these many discussions, as it had since publishing its Principles paper in 2007. For it to be allowed to go back to the debates of 2009, 2010 and 2011, and reopen issues like categories, closed generics, and requiring registry operators to prove their Registry is in the public interest will be very damaging to ICANN.

ICANN has followed its proper processes over many years, at the cost of substantial delay. This action by the GAC unjustly threatens to destabilize the ICANN reputation, and the multi-stakeholder model by which it operates.

It is not the proper role of the GAC to be making last-minute demands at the level of detail of the paragraph IV and annex I of the Beijing Communique advice. The GAC has a role in the multi-stakeholder policy development process, which it has played fully. Changes at this stage in the applicant process should only go through the bottom up policy development process.

The irony that the GAC is in breach of Article 2.5 of its own GAC principles, (see <https://archive.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>) is not lost on most applicants.

Applicants are put in a very difficult position, even under duress. Given the years of costly delay in completing the program, many will feel they have no option but to abandon their applications. Others will abandon their principles, or their business plans. It is inappropriate for applicants to be put in such a position at this point in the process.

ICANN published a guidebook on which applicants relied on making their business arrangements, and under which ICANN took in approximately \$350,000,000 in fees. Applicants relied on applicant guidebook 1.2.11, which provided that “reasonable updates” would be made

GAC Advice Response Form for Applicants



to the guidebook, as a result of changes to technical standards or policies that might be adopted during the process. They did not anticipate, and should not have to accept unilateral changes made by the GAC at this late stage which affect the framework of their applications, and as a result threaten to overturn their applications or their businesses.

If the Board abandons the process prescribed to applicants as a result of the Beijing Communiqué advice, observers may well query what hope there is for the industry-led, self-regulatory model that ICANN is built on. They will wonder what other influences the Board may be susceptible to. The damage to ICANN's reputation as a mature, responsible, international body, competent to manage the DNS, could be severe.

PART TWO

A. PARAGRAPH IV - GAC ADVICE TO THE ICANN BOARD

In relation to paragraph IV 1F (Singular and Plural versions of the same string as a TLD), we urge the Board not to overturn the findings of its String Similarity panel. We understand they received a lot of training, are experts, and their results should be trusted. The test is visual similarity, and experience shows normal people, including when operating as consumers, can readily distinguish singulars from plurals. The use of outside expert panels was done precisely to avoid debates between non-experts like the GAC and the Board on important tasks like this one. Allowing singulars and plurals adds to consumer choice, and will promote competition, which are important goals of the gTLD expansion.

B. SAFEGUARDS ON NEW gTLDs - Annex 1

The first category of safeguards are applicable to all new gTLDs, and require 6 categories of processes which registry operators are to perform.

As stated above, we have applied for seven .gTLD strings. However, by way of example, we refer to our application for .broker below. We would point out that we would be able and willing to comply with each of these obligations for all of our strings.

1. Whois verification and checks

Our registry is likely to have between 5 and 15 registrations, and all delegated to internal and therefore known registrants, at least for the first few years, after which the number may increase slightly. Our back end provider is VeriSign, with a proven track record in Whois service. We are willing and able to implement any agreed policy on Whois verification and checking. However, as is true of all of the following safeguards, imposing the GAC "safeguards" routinely on all TLDs regardless of size or nature is simply unnecessary, unproductive and a waste of money and other resources.

2. Mitigating Abusive Activity

As our application states in answering Q 28: "IG Group is intending to operate .broker for the benefit of Internet users that have an interest in finding information on products and services related to .broker." There is no incentive for IG Group to confuse Internet users, nor otherwise use domain names in bad faith since IG Group intends to utilize the .broker to benefit internet users by ensuring increased trust, user confidence and utility allowing for better product knowledge and the elimination of user confusion. Furthermore it will be well known that the IG

GAC Advice Response Form for Applicants



Group is the corporate entity behind the .broker and IG Group wishes to avoid negative press or loss of goodwill.

Notwithstanding the above, IG Group understands and agrees that it must comply with the different rights protection mechanisms such as the Uniform Domain Name Dispute Resolution Policy (UDRP) and the Uniform Rapid Suspension System (URS) as described in the gTLD Applicant Guidebook (as may be later amended via Consensus Policy) and the Registry Agreement. The aforementioned policies provide a strong incentive to ensure that relevant and effective checks are in place to ensure that all .broker domain names are only registered and used in an appropriate manner so as to benefit Internet users rather than in any manner that may be deemed inappropriate or in bad faith.

IG Group will implement a clear written policy that requires the relevant corporate authorization and approvals to be procured and evidenced in order for any .broker domain name to be registered for IG Group's use. In the event that IG Group resolves to permit third parties (other than affiliates) that have a relationship with either IG Group or its business, to register (or license) and use domain names within the top level domain (TLD), then additional corporate authorizations and approvals may be required to ensure internal responsibility for permitting and enforcing the terms of use of the .broker domain. In addition to these safeguards, all registered domain names in the TLD will be regularly monitored for abusive use.

We are willing and able to include in our terms of use specific prohibitions of the kind envisaged by the GAC.

3. Security Checks

With the very small number of registrations in our registry, security breaches will be obvious and easy to detect and remediate. We already have plans to suspend any names that pose security threats.

4. Documentation

VeriSign already complies with all reporting requirement in relation to Whois. Changing the nature, frequency or other details of Whois reporting should be done only after consultation with VeriSign and all other operators to ensure industry best practice is achieved, which would probably best done through an ICANN PDP, that would apply changes to all gTLD registries, rather than only some.

5. Making and Handling Complaints

We already have a process for handling issues arising from the use of domain names in our registry. Because there will be only a few, used internally for corporate identification purposes, it is highly unlikely there will be any complaints of the kind the GAC refers to.

6. Consequences

Given that it is unlikely that false Whois data will be supplied in our closed registry, ordering suspension is possible but likely to be rare and of little impact on consumers.

C. SENSITIVE STRINGS AND REGULATED MARKETS - Annex 1 Category 1

GAC Advice Response Form for Applicants



This application is for .broker, identified as a possibly sensitive string and used in the financial markets. A number of our other applications have been referenced in the financial sector also.

1. Acceptable use policy

As a major international broker, we expect to continue to comply with all applicable laws.

2. Notification

We would be willing to comply with this obligation.

3. Commensurate security measures

None of our registrants collect sensitive data as a consequence of their registration in our registry. To the extent they do so, it is in compliance with existing law. We do not consider that this is a matter that is related to a domain name registry contract.

4. A working relationship with regulatory bodies

As a major broker, we already have relationships with all necessary regulatory authorities.

5. A single point of contact for Registrants

We would be willing to comply with this obligation.

D. FURTHER SAFEGUARDS FOR SENSITIVE STRINGS - Annex 1 Category 1 (under The GAC further advises the Board on page 10)

Although we are not identified by the GAC, we assume that .broker might qualify in this category as would our other financial and gambling strings.

In general, the actions required by the GAC would be inappropriate in relation to professional registrants. Moreover, by requiring these conditions, the GAC will be substantially changing the operating assumptions of many applicants. In our view, these requirements are of a type that registries in some industries will want to implement for marketing reasons – it is in their interests to present their domain name registrants as properly, safely and continuously credentialed in the particular field.

Those applicants who have built business models around complying with the additional costs of implementing these new procedures would be at an unfair advantage in relation to those applicants who will have to amend their business plans in order to comply. At the same time, the benefits of the confidential application phase have been lost as those applicants are now disadvantaged, as their previous market advantage has been lost, and their competitors are given a late chance to substantially improve their applications, with the extra advantage of having seen what the initial applicants were proposing to do.

It's not clear that ICANN procedures will allow such major changes in the application – at the very least, it may require further evaluations, thus delaying the applicants and others in contention with them.

In relation to .broker, as we have only internal registrants, we already are aware that they have valid credentials. There is no need to consult about our company with any regulatory

GAC Advice Response Form for Applicants



authorities. We do not need to do periodic checks to ensure our credentials are maintained. The same principles apply with our other financial and gambling strings.

E. RESTRICTED ACCESS - Annex 1 Category 2

As our application for .broker explains, we plan to run a TLD restricted to our own use. As we point out above under part one Annex one advice of the Beijing Communiqué, there is no presumption that the gTLD space is to be open. Further counter-examples include .edu, .int, and .mil. The same arguments apply in relation to our other string applications. There is no requirement to this effect in the Guidebook as has been amended throughout the application process.

The restrictions pursuant to which we operate our strings should be at our discretion and not dictated by the risks of our business provided the operation of the string is not at jeopardy. We find this advice too vague for proper implementation or enforcement in particular at this point in the gTLD application process. We consider that it would be nigh on impossible for the Board to evaluate whether the “restrictions are appropriate for the types of risks” for each string identified. This would delay identified applications for several years.

F. EXCLUSIVE ACCESS - Annex 1 Category 2

We intend to operate .broker on an exclusive basis – only our own entities will be eligible for registration. We also intend on operating the other strings we have applied for in the same manner. The GAC advice is to the effect that we should be required to show that this “serves a public interest goal.”

First, that is a vague and subjective test. Ascribing meaning to it will take considerable time. Each different “public” in the world will have its own view of what “public interest” means resulting in inconsistent determinations and repeated conflict. For example, considering the body of global broking regulators as a group of the “public”, they may well have a collective view about what is in the public interest. Consumers may well have another. The subjective test will vary from country to country and for .broker different groups of broking firms and their trade associations will also have different interpretations.

Without universal, objective standards of what is considered a “public interest goal” and expert panels who have experience in making determinations regarding “public interest goals” that are independent of individual government influence, predictable and uniform determinations are impossible to expect and achieve. Thus, some applicants may find themselves barred from operating their gTLD as intended and expected, resulting in material harm to applicants whose strings are determined to arbitrarily not meet “public interest goals”.

This is another attempt to re-open previous policy debates. Members of the GAC had previously called for a public interest requirement for all new gTLDs, in order to obtain further economic reports to try and establish public cost/benefit from the innovation of new gTLDs. However, it was argued the new gTLD expansion provided for competition and consumer choice, which were public policy goals in their own right. The compromise was to amend Application Question 18 and to require applicants to explain possible benefits - for use, not in evaluation, but in later economic studies in reviewing the first round.

GAC Advice Response Form for Applicants



The requirement to show that a string was in the public interest also appeared in an early (June 2011) draft Statement of Work for the Internet Assigned Numbers Authority contract - "...the Contractor shall include documentation to demonstrate how the proposed string has received consensus support from relevant stakeholders and is supported by the global public interest." http://www.ntia.doc.gov/files/ntia/publications/fr_iana_furthernoi_06142011.pdf. By the time the contract went out as RFP, the wording had changed to: "the contractor must provide documentation verifying that ICANN followed its own policy framework.... including specific documentation demonstrating how the process provided the opportunity for input from relevant stakeholders and was supportive of the global public interest." (see https://www.fbo.gov/?s=opportunity&mode=form&id=72dc5eb7b831f44f5eadb6c2f44a60ef&tab=core&_cview=0).

The U.S. National Telecommunications and Information Authority has accepted that attempting to show that each application was a priori in the public interest was not an appropriate test. It changed that to a requirement to show that the process was in the public interest. It remains an inappropriate test, including for closed generic gTLDs.

CONCLUSION

There is no justification for changing the rules on applicants at this point in the application process. The concept of closed generics was known and debated during the policy development work. We have built a business case in reliance on the Applicant Guidebook and filed our applications pursuant to the terms of the Applicant Guidebook.

Accordingly, we ask the Board to be very careful in accepting any GAC advice that seeks to re-open closed policy debates, or that otherwise seeks to impose new burdens on applicants or that has any risk of causing delay to the program.

If the changes proposed by the GAC seem reasonable, there will be many opportunities to add them in the years ahead as part of proper policy development work, including clarifying many of the current ambiguities or vagueness mentioned above. There are processes for amending the contracts – these can be properly used. This is not the time for delay in launching the new TLDs.

Acceptance of the GAC Beijing communique would not only cause unreasonable delays to applicants in the final determination of their gTLD application, but also set a dangerous precedent that it is acceptable for the GAC to issue mandates after the policy-making process and not provide specific recommendations and inputs during policy formulation stages.