

PROCESS OVERVIEW OF SEEKING PROMULGATION OF THE REGISTRY AND REGISTRAR LICENSING REGULATIONS AND PROCEDURES



+27 (0) 10 020 3910



info@zadna.org.za



www.zadna.org.za

.ZA Domain Name Authority NPC - Registration no. 2003/021150/08

Directors: Ms. P Legoze – Chairperson, Prof D Mashao, Prof K Moodaliyar, Ms. M Malapane,
Mr. N Msibi, Ms. S Mzizi, Ms. V Motloutsi, Mr. M Wesi (CEO)

Company Secretary: First Corporate Secretaries

Contents

1. INTRODUCTION.....	4
2. ASSESSMENT OBJECTIVE	4
3. BACKGROUND	4
4. NEED FOR THE RRLR&P.....	4
5. ZADNA INTERVENTION	7
6. IDENTIFICATION OF I&APs.....	8
7. NOTIFICATION OF I&APs	8
8. ENGAGEMENT OF I&APs	9
9. TARGETED ENGAGEMENTS.....	9
10. WRITTEN INPUTS.....	11
11. DRAFT RRLR&P REVIEW	19
12. BENEFIT OF THE DRAFT RRLR&P FOR THE STAKEHOLDERS	19
13. IMMINENT RISKS.....	20
14. CONCLUSION	20

Abbreviation List

1. ECTA	Electronic Communications and Transactions Act No. 25 of 2002
2. DCDT	Department of Communications and Digital Technologies
3. I&APs	Interested and Affected Parties
4. PPR	Public Participation Report
5. ROA	Registry Operating Agreement
6. RRLR&P/Draft Regulations	Registry and Registrar Licensing Regulations and Procedures
7. RRLF	Registry-Registrar Licensing Framework
8. SLA	State Law Adviser
9. SLD	Second-Level Domain
10. ZADNA	ZA Domain Name Authority

1. INTRODUCTION

ZADNA has compiled this document for the RRLF Project inception in 2008. The document outlines the processes of various phases that ZADNA undertook from inception to date. They involve:

- Identifying the need for putting the RRLR&P in place;
- ZADNA Intervention through the RRLR&P;
- The benefit that the target group will get from having the RRLR&P in place;
- The risks imminent and how they will be addressed.

2. ASSESSMENT OBJECTIVE

The document's objective is to share the fundamental considerations ZADNA had before putting the RRLR&P in place. These considerations were essential to consider as having the RRLR&P promulgated and enforced would affect the entire .za namespace, particularly ZADNA, in the administration of the namespace and the functioning of key stakeholders being the Registries, Registrars, ZADNA Members, and Stakeholder formations.

3. BACKGROUND

Historically, the .za namespace in South Africa was not regulated until ZADNA was formed and given a regulatory function through the promulgated ECTA. Amongst other functions, section 65 of ECTA empowers ZADNA to licence and regulate Registries and Registrars and publish the requirements and procedures for adherence in their business conduct.

With no Regulations but the ECTA itself in place as of 2002, ZADNA could not carry out the above function, particularly in licensing Registries and Registrars. The regulation of the namespace is currently limited to the accreditation of Registries and Registrars through a Registry Operator appointed by ZADNA through a ROA. This is procedurally guaranteed through enforcement of the ZADNA-developed General Policy and SLD Policies for the commercial and non-commercial SLDS.

While the above can be argued to be a systematic and sufficient process of regulating the space, there have been identifiable gaps that do not fully allow ZADNA to ensure its administration and regulation. Therefore, this necessitates a framework that would guarantee ZADNA's ability to administer and adequately regulate the namespace.

4. NEED FOR THE RRLR&P

This section highlights the gaps that call for the need to have the RRLR&P in place.

4.1. Robust Legal Framework

4.1.1. ECTA and ZADNA Policies

The framework comprises the principal Act and a set of policies as abovementioned. This has implications for the extent of enforceability of the framework overall. The status quo presents a risk to the binding nature of the ECTA in its formulated form and the clear outline of the policies that are not binding. In *Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty)Ltd*, it was rightly pointed out that;

"...laws, regulations, and rules are legislative instruments, whereas policy determinations are not. As a matter of sound governance, policy should normally be reflected in such instruments to bind the public. Policy determinations cannot override, amend or conflict with laws (including subordinate legislation)."

Therefore, the essence of the above necessitates that principal legislation (ECTA) should be complemented by Regulations that will aid the application of the principles encapsulated in the ECTA. This will then be linked to the formulated policy framework to guide the legalities expected from the combination of the ECTA and the newly proposed RRLR&P.

4.1.2. ICT White Paper

The ICT White Paper, which has served as one of the crucial documents in guiding the functioning of the .za namespace, refers to the following challenges within the space:

- i. ***Several gaps in legislation need to be addressed so that ZADNA can fulfil its mandate efficiently;***

The proposed RRLR&P provides an opportunity to address the above challenge as far as the legislation (ECTA) relates to the .za namespace. The RRLR&P offers an opportunity for licensing of Registries and Registrars subject to audits that would allow the Authority to vet the compliance of the two stakeholders in their operation to ensure a robust, safe, and user-friendly namespace that Registrants can rely on.

- ii. ***The current management of .za SLDs remains in the hands of several entities.***

While the SLDs administration in the .za namespace lies with different entities and individuals depending on their categorisation of commercial and non-commercial, and sub-categorisation in some respects, it is fundamental that ZADNA provides a framework applicable across the board, which framework will aid ZADNA to hold each of the different Administrators accountable for the SLDs under their custody.

4.2. Structural Reinforcement

The .za namespace operates through a unique registry operator model, which ensures different responsibilities down the value chain. The RRLR&P clearly articulates the functions for which the Registries and Registrars use. This is an essential element meant to eliminate ambiguity regarding the functioning of such stakeholders. This inclusion further provides for the binding nature of the responsibilities currently outlined in policies whose binding nature could be subject to contention.

Moreover, with the Registry operator model in place, ZADNA will eliminate the dependency on the ROA without a sustainable framework legitimised through the RRLR&P. This will provide a transparent process to rely on, complementing the ROA between ZADNA and an appointed Registry Operator.

4.3. Rife Domain Name Infringements

Having a secure namespace is crucial for any namespace globally. To ensure that ZADNA keeps the .za namespace safe, it seeks to strengthen the response to notices of infringement received daily from abusive registrations of the domains. The approach commonly used in most jurisdictions has been a reactive one, where an infringement occurs, followed by investigation and take-downs where warranted.

With a similar exercise adopted under the .za namespace, there has been a continuing growth in infringements necessitating a combination of proactive and reactive measures for recourse, primarily to affected Registrants. Below signifies examples of the resultant effect of the infringements, which amount to fraud:

4.3.1. Puppies Sales (twinklelightpaws.co.za & twinklelightpuppies.co.za)

In this matter, fraudsters registered the above two domains, offering puppies for sale. The relevant alerts were detected on 419 websites as of September 2019. The websites for the domain names were similar except for minor changes to the domain names and website names. A close inspection of the content displayed on the websites under these domain names reflects the same or similar images of puppies for sale of the same age (10 months) over a period well over a twelve-period timeline.

For unsuspecting potential buyers, purchases were made with a loss of over **R3 000.00 per transaction** across the sites. Though the reactive measure was implemented for take-down, the money lost was not obtained from the buyers due to fake domain registrations by fraudulent registrants.

4.3.2. Purchase of Paint

ZADNA, in August 2021, received an infringement complaint wherein the complainant sought to buy paint from a fake paint supplier who had registered a fake domain name. Upon payment of the paint ordered, there was no delivery, and tracking of the domain name revealed that it was a

fake registration. The loss suffered amounted to **R40 888.25**.

4.3.3. Tractor Purchase

Infringements such as the above do not relate only to small amounts of money losses. ZADNA received a complaint for a fraudulent transaction for purchasing a tractor sold on a platform with a fake registration. The complainant lost **R400 000** over the transaction.

5. ZADNA INTERVENTION

To address the gaps outlined above, ZADNA inceptioned the process of putting the RRLR&P in place. This process was commenced in 2008 to seek the Minister of DCDT to promulgate the then-first Draft of the RRLR&P. This was done pursuant to Section 68 of ECTA, which allows ZADNA to develop Regulations subject to the approval of the Minister. However, the draft Regulations were not approved following their rejection by the State Law Adviser (SLA). Similar attempts were made in 2009 and 2010, which were equally rejected. The SLA's opinions are available on file. As a result of the State Law Adviser's opinion, ZADNA entered into an Operating Agreement with the ZA Central Registry (ZACR) in April 2012 to accredit the Registrars.

The current ZADNA Board has resolved to make another attempt relying on section 68 of ECTA to propose Draft Regulations and Procedures that the Minister can promulgate. The ZADNA Board acting through the ZADNA Management carried out the following through a project inceptioned in 2020:

5.1. Setting up an RRLR&P Project team

ZADNA set up a project management team comprising of internal and external personnel to drive the project from inception to end.

5.2. Development of Project Artefacts

The ZADNA Management shared all previous documents with the project team tasked with implementing the project. The team was tasked with developing the project artefact comprising:

- Project Charter;
- An Implementation plan and Work Breakdown Schedule;
- Roles of the different Team members;

The above artefacts were created to justify the need to close the gaps outlined in this document. They comprise:

- Conducting a diagnostic survey of issues likely to be raised by stakeholders;
- Identifying the imminent risks;

- Obtaining a legal opinion on the above; and
- Documenting the same in a Preliminary Report.

The project team achieved this successfully.

5.3. Review of the Draft Regulations

- 5.3.1.** The project team reviewed the Regulations rejected by the SLA in 2010, relying on the legal opinions previously issued by the SLA. Reliance was also made on the Preliminary Report produced to create a version of the RRLR&P for Board consideration and sign-off.
- 5.3.2.** The Draft was presented to the Board and, upon sign-off, was submitted to the DCDT for consideration and submission to the SLA.
- 5.3.3.** The DCDT, upon reviewing the Draft, sent it back to ZADNA to address the input made.
- 5.3.4.** ZADNA addressed the input and resubmitted it to DCDT. The Draft with the input was submitted to the SLA, which found the Draft constitutionally compliant upon review.
- 5.3.5.** After that, the SLA advised that the Draft RRLR&P could be subjected to a public participation process.
- 5.3.6.** Acting on the advice of the SLA, ZADNA recommended that the Minister of DCDT issue a gazette for the Draft RRLR&P to be subjected to public participation.
- 5.3.7.** Before gazetting, the Minister requested legal counsel from her office to provide an opinion on the Draft RRLR&P.
- 5.3.8.** The legal counsel sought was obtained, and the ZADNA Board was advised through the ZADNA Management to initiate a public participation process.
- 5.3.9.** The public participation process was initiated in April 2022, and the findings are documented herein.

6. IDENTIFICATION OF I&APs

For maximum reach in the public participation process, ZADNA carried out a stakeholder mapping exercise to identify relevant stakeholders to inform and engage in the process. The identification resulted in a 4-pronged classification of stakeholders per the engagements outlined under the 8 below.

7. NOTIFICATION OF I&APs

While public participation was open for all I&APs, ZADNA notified specific groups of stakeholders through letters for targeted engagement meetings on the Draft RRLR&Ps. This was done because such stakeholders would be the most affected once the Draft RRLR&Ps are promulgated. The letters were emailed to these stakeholders (listed under item 8 below).

8. ENGAGEMENT OF I&APs

The engagement meetings with the stakeholder groups were structured as follows, without limiting other forms of engagement, as some of the stakeholders fell over and above their categorisation below:

Stakeholder Type	Primary means of Engagement
a. Enabling Stakeholders	<ul style="list-style-type: none"> ○ Meetings ○ ZADNA Website
b. Functional Stakeholders	<ul style="list-style-type: none"> ○ Meetings ○ Virtual Sessions ○ Members Memo ○ ZADNA Website
c. Defused Stakeholders	<ul style="list-style-type: none"> ○ Newspaper Adverts ○ Sponsored Articles ○ Social Media ○ ZADNA Website
d. Normative Stakeholders	<ul style="list-style-type: none"> ○ Newspaper Adverts ○ Sponsored Articles ○ Social Media ○ ZADNA Website

9. TARGETED ENGAGEMENTS

The targeted engagement meetings organised by ZADNA were for four groups of stakeholders.

Six (6) engagements were organised, with four (4) engagement meetings held on Microsoft Teams and two (2) engagement meetings held in person. The engagements took place as follows:

Date of Engagement Meeting	Platform	Key Inputs from Stakeholders
12 May 2022	<ul style="list-style-type: none"> ○ Microsoft Teams 	<ul style="list-style-type: none"> ○ ID details requirement will result in fewer domain registrations in preference for less information demanding ccTLDs. ○ Existing Registrants will cease using the .za and opt for other ccTLDs, such as .com, with fewer requirements and a user-friendly environment. ○ Introducing a licensing fee will result in a fee increase over and above the fee increase ZADNA has effected over the last 12 months.

		<ul style="list-style-type: none"> ○ Smaller RAR businesses will be adversely affected by the need to make more payments for their operation. ○ The imposition of BBBEE requirements bars flexibility for entry to the market. ○ Conversely, some stakeholders believe BBBEE requirements will open up the market for previously disadvantaged but interested parties.
12 May 2022	<ul style="list-style-type: none"> ○ Microsoft Teams 	<ul style="list-style-type: none"> ○ ZADNA should provide a reasons document for putting the RRLR&Ps in place. ○ The RRLR&Ps pose stringent measures unattractive to new registrants. ○ The requirement for ID details is onerous to the RAR community.
25 May 2022	<ul style="list-style-type: none"> ○ Microsoft Teams 	<ul style="list-style-type: none"> ○ ZADNA should segment the licence and registrar fees in clause 8(1)(b). ○ ZADNA should add a clause that speaks to a pricing policy. ○ ZADNA should outline when the Final RRLR&Ps are to be enforced once promulgated.
25 May 2022	<ul style="list-style-type: none"> ○ Microsoft Teams ○ I-Day Cape Town 	<ul style="list-style-type: none"> ○ ZADNA should provide clarity on the cost of the licensing fee. ○ An additional fee will make .za anti-competitive. ○ ZADNA's access to RARS technical systems will invade IP rights. ○ ZADNA lacks the technical expertise to carry out the required audits. ○ There was a lack of RARS involvement during the development of the Draft RRLR&Ps. ○ The requirement of registrant ID details will raise data protection issues. ○ There should be clarity on how the ID details of existing registrants will be collected and whether the details will be verified. ○ ZADNA should outline if BBBEE requirements apply to foreign-registered companies (RARS). ○ ZADNA to indicate a timeframe for enforcement of the RRLR&Ps once promulgated. ○ ZADNA to outline if there would be penalties for non-compliance with the RRLR&Ps. ○ ZADNA to outline if there would be an appeal process in the event the Licence application is declined. ○ ZADNA should expand on the revocation process for commercial RARS.
19 May 2022	<ul style="list-style-type: none"> ○ Black Business Council Forum 	<ul style="list-style-type: none"> ○ This was an information-sharing event on the process of promulgating the RRLR&Ps.

10. WRITTEN INPUTS

ZADNA received inputs from relevant stakeholder formations, Registries, Registrars, and ZADNA members. Below is a summary of critical inputs made:

In Support of the Draft Regulations	Against the Draft Regulations
<ul style="list-style-type: none">○ There is a need to move with the directive of the ECTA and implement the Regulations and procedures in the namespace to be a world leader in standards in the sector.○ While there are voices of concern among the incumbent Registrars with allegations of the regulations being unnecessary and posing a risk of stagnating the sector's growth in SA, particularly the .ZA domain namespace has been further alleged that it would cause customers to move towards other namespaces such as the .COM as it is not as regulated and has no red tape associated with it. However, having polled its members, it seems these are unfounded and far from the truth, but instead deliberately designed to hide to true nature of the lack of transformation and possible unlawful activities within the sector.○ There is support for the establishment of a database of all the identity documents of the individuals or organisations that seek to register domains which should be held by Registrars, in the same way as the financial sector has implemented FICA to reduce fraudulent activities, as such, this would drastically reduce fraudulent domains activity.○ Implementing the Regulations would enable law enforcement to act swiftly on perpetrators based on the verified information to combat cybercrimes.○ Licence fees are necessary for the administration of the Authority; therefore, it is supported that there is levy of licence fees.○ It is submitted that the Authority sets up fee categories for the Registrars. Registrars' licence fee structure should be structured according to the length of operations of the business, or according to the annual turnover	<ul style="list-style-type: none">○ The Draft Regulations will place additional burdens and/or costs that deter Registrants from the .za SLDs and push them toward domain name options with less burdensome registration requirements.○ The Draft Regulations have been submitted for public comment without any context or justification for their introduction.○ The ECTA cannot be the sole rationale for introducing the new burdensome requirements as this makes .za anti-competitive.○ There is no indication of the actual amount of the fees or a framework for how they will be determined.○ Smaller Registrars who cannot afford to absorb the proposed additional fees will cease operations.○ The collection of ID Details is against general global domain name practices and global framework.○ Further, the collection of ID details will require system changes, and the cost thereof will be passed to Registrant, resulting in increased costs.○ Clarity is sought for collecting ID details for foreign-registered companies if not exempted.○ No equal requirement is provided for commercial Registrars to provide ZADNA with information if they cease operation.○ Substitute "require" with "permit" on regulations 7(3) and 8(1)(f) on the release of information to third parties.○ Set out a timeframe for the commencement of the Regulations and how the transition by existing RARs will be handled.○ The audit requirement is onerous and invasive of RAR IP rights.

generated by the Registrar, e.g., this could be structured as per the size of the company according to the B-BBEE definitions.

- It is further submitted that a category of new entrant Registrars should be established.
- The new entrant Registrar category should be charged a minimal fee as Registrars so that barriers to market entry can be reduced.
- The digital landscape changes rapidly, and the Authority has the exceptional task of managing the domain namespace, which is fluid and global. Therefore, the leeway to renew the licence every 10 years should be allowed.
- Ten years are sufficient to establish and manage the business.
- It is submitted that towards the end of the licence cycle, adequate time to twenty-four months is provided for the renewal application.
- Personal data is a currency for individuals and a country in the digital age; therefore, support is provided for collecting personal data. POPI, therefore, places a significant responsibility on parties who collect, store, use and destroy personal information ("responsible parties") and provides rights and remedies to persons whose rights have been infringed ("data subjects") in which instance, the Authority will be trusted to do.
- Implementing BBEE ownership requirements will increase the participation of local enterprises and, consequently, the local economy. Should the status of the total number of registered Registrars be determined, the Authority would have insight into ownership figures and be able to regulate the business environment to favour South African complaint enterprises.
- It is submitted that the BBEE declaration for licensing purposes should be part of the application and process.
- Submission is made for the inclusion of the size of the applicant as per the BBEE definition of size. This will further enable the Authority to

- The Draft Regulations should clarify whether BEE/BBEE requirement will establish eligibility requirements for obtaining a Registrar licence, either now or in the future.
- The collection of ID details is unnecessary and should apply across all businesses in SA if imposed.
- The Draft Regulations are heavily biased towards the un-moderated, fee-paying second-level domains and make little to no provision for the moderated¹ second-level domains such as AC.ZA, EDU.ZA, GOV.ZA, MIL.ZA and SCHOOL.ZA
- Most moderated second-level domains are operated for the public benefit. They, therefore, cannot afford the payment of the licence fees.
- Updating the Registrant database and ensuring compliance with the Regulations creates overheads that the non-commercial SLDs cannot afford to sustain.
- The demand for ID Documents increases the risk of identity theft and fraud by the Registrant-Registrar-Registry model's distribution.
- It is unclear what happens if a Registrant is a juristic person such as a public university or statutory research body with neither an identity document nor a company registration.
- Even if the registrar fees remain unchanged, this will ultimately push up the cost of registering a domain which the Registrants will incur.
- There should be an in-depth survey of the mechanisms utilised by other ccTLDs and gTLDs to mitigate risks associated with identifying domain name ownership, together with reasons why those mechanisms are not appropriate in South Africa; and
- An impact assessment showing the likelihood that:
 - i. existing Registrants will migrate their registrations to other TLDs when faced with a requirement to provide an identity document; and

<p>intervene in ensuring the participation of SMMEs in the sector as per the government's policy on economic development.</p> <ul style="list-style-type: none"> ○ If the Draft Regulations are promulgated, they should provide licence exemption for moderated domains. ○ Should the mandatory collection of Registrant's personal information exist, then Registries and Registrars need to be empowered to suspend and ultimately delete domains belonging to non-compliant or unreachable Registrants irrespective of renewal status and indemnify Registries and RARS from the consequences of this. ○ The five-year licence period proposed for registries may make licensing as a Registry commercially unattractive. It may also reduce the perceived stability of the namespace. A proposition of 10 years validity of a licence is made for Registries. ○ Consideration of a minimal regulatory approach subject to taking cognisance of: <ul style="list-style-type: none"> • The degree to which personal information has historically been required to operate domain name services in South Africa effectively; • The specific purpose(s) for which personal information is collected; and • Not all second-level registries collect the exact personal information as the un-moderated domains or the ICANN registration data model. 	<ul style="list-style-type: none"> ii. potential Registrants will be turned away from the .ZA domain name space in favour of less burdensome options. ○ Consultation with law enforcement agencies, the National Cybersecurity Hub, and the various sector CSIRTs⁵ about the desirability of driving cybercrime such as phishing to other generic top-level domains outside of South Africa and over which there is substantially limited recourse. ○ Non-compliance with the Regulations will prejudice all South African Registries and RARS doing business in countries that recognise GDPR jurisdiction. ○ The assumption that Registries and RARS operate separately is problematic in cases of moderated SLDs that operate using a collapsed or simplified model. ○ The Draft Regulations force a Registrar to register a domain regardless of whether the Registrant has met the Registrar's contractual requirements. This gives the Registrar no recourse against the Registrant in the case the Registrant defaults on its obligations. ○ Some clauses refer to "non-commercial" Registries and Registrars. This terminology is ambiguous, confusing, and not aligned with historical use. It is suggested that the word "non-commercial" be replaced with the phrase "moderated and/or private" to distinguish them from the un-moderated domains that are typically operated on a fee-paying basis.
	<ul style="list-style-type: none"> ○ The definition of "registry data" also includes a reference to "zone records". Under normal circumstances, the DNS is designed to be distributed, and neither a Registrar nor a Registry needs a copy of a Registrant's zone records. All of these references should read "zone delegation records" or "delegation records" more correctly. ○ The forms in the annexures to the Draft Regulations mandate information not required by the Draft Regulations themselves. In this case, they should either disclose the reasons for requiring such

	<p>information (for example, where it would be required by other legislation), or the fields should be made optional.</p> <ul style="list-style-type: none"> ○ Annexure C (Complaint Form) would appear to introduce a fee for a complaint. The Draft Regulations neither support this nor seem in the industry's best interests. ○ The need to access RARS systems and revoke RAR licensing (accreditation) is short notice. 10 business days is far too short as there would be a need to provide time for Registrants to move domains and wind down operations. Giving a third party like ZADNA direct access to RAR systems would also be unfeasible and potentially harmful to all customers, not just .za clients.
	<ul style="list-style-type: none"> ○ Despite the requirements from ECTA to licence Registries and RARS, RARS have worked well for the past 10 years, and introducing the Regulations would stifle innovation and investment and increase compliance costs. The following questions in deciding whether to implement the licence fees: <ul style="list-style-type: none"> • Has there been a material failure on the part of registrars (private markets) to grow a business (ZA namespace)? • Has a cost-benefit analysis been done to determine the social benefits versus the social costs of what is proposed in the draft regulations? ○ The definitions and other requirements must be consistent across the laws, regulations, policies, charters and services, and other contracts that govern the administration and management of the .ZA namespace to ensure reliability and to avoid unnecessary confusion. Definitions such as Licensing fees, Registry Licensing fees, and Registrar Licensing fees are omitted in the Draft Regulations. ○ The rationale for the differentiation of Registry and RAR Licensing periods is unclear and would inadvertently create uncertainty, risk significant disruptions, and lead to a lack of investment by both the Registry and RARS. ○ There is silence on Registry and Registrar Licence Fees- to avoid this, the process

	<p>formula (if applicable) and quantum for determining licensing fees that would be payable by registries and Registrars and any other ancillary information must be made available to all stakeholder groups.</p> <ul style="list-style-type: none"> o Structural and/or Process Defect- The structure of some sections of the Draft Regulations is an untidy or incohesive way of drafting that could very well lead to confusion, interpretation issues in the future, and consequent litigation risks. o Know Your Client Details and Validation Challenge- There is no clarity on applying clauses on compliance to information required from RARS and collecting ID details. o The audit requirement is intrusive and goes against international best practices. o Eligibility Criteria Creeping In Inadvertently with BBEE Requirements- while the transformation agenda of relevant BBEE laws, sector codes, and policies are appreciated, the current form of the regulations fails and/or neglects to consider that foreign Registrars are an essential part of the .ZA SLD ecosystem. o Retrospective and Transitional Requirements Missing from Regulations- The Draft Regulations seem to add several obligations and complexities on the part of licenced entities without mentioning if these obligations are retrospective or prospective in nature only. o Whois Access or Access to Registry Database- It is suggested that provisions on access to the Registry database be reworked to remove any confusion and/or misconception about what information must be disclosed to the public. o Non-Commercial Registry and Registrar Provisions- the terms 'Non-Commercial Registry' and 'Non-Commercial Registrar' are not defined in the draft Regulations and are believed to be vague.
	<ul style="list-style-type: none"> o The Draft Regulations, as proposed, would have a deleterious effect on the .ZA namespace. Domain names are particularly subject to marketing and trust issues. This is the main differentiator between the various

	<p>TLDs and ccTLDs available. Goodwill is an essential factor in the use and adoption of the .ZA brand. As indicated by the Draft Regulations, a heavy-handed, top-down approach would lead to brand owners shifting their focus to other more stable, less cumbersome, cheaper, and more welcoming TLDs.</p> <ul style="list-style-type: none"> o The lack of a regulatory impact assessment to inform the development of the draft regulations and the failure to provide interested parties with an explanatory document setting out ZADNA's reasoning is both an impediment to understanding and a material procedural flaw. This is at the root of the problems with the draft regulations as set out in the submissions below. o The Draft Regulations, as they are proposed, need serious reworking based on a comprehensive understanding of the domain name ecosystem to contribute to the continued success of the .ZA namespace.
	<ul style="list-style-type: none"> o There is no reason to conflate the technical operations involved in domain name registry functions with the "KYC" responsibility that ZADNA wishes Registrars to satisfy regarding their commercial relationship with their customers. o Secondly, at present, consumers of domain name services are funding the Authority at an exorbitant rate through the portion of the fee regulated by the Authority. The introduction of fees for the Registrars and Registry Operators, if done in addition to the current fees charged to end-users, would be wholly unacceptable and represent a "money grab". o Finally, the Regulations do not adequately consider that Registrars will not necessarily provide Registrants with access to all SLDs.
	<ul style="list-style-type: none"> o The Draft Regulations assume that SLD administrators (Registries) can compel Registrars and Registrants to provide identifying information or update their recorded details. Such requirements are not in the Authority's General SLD policy or any

	<p>of the SLD Charters.</p> <ul style="list-style-type: none"> ○ The Draft Regulations assume that all SLDs have a renewal process and specific renewal dates for all domain registrations. ○ The Draft Regulations assume that all SLD domain registrations are paid for. This is not true for almost all moderated SLDs. It is not even valid for all unmoderated SLDs. ○ The Draft Regulations imply that a licenced Registrar must register domains in all SLDs upon request by a Registrant. A Registrar can only register domains where that Registrar has a relationship (accreditation) with the Registry Operator (RO) for a specific SLD. ○ The Draft Regulations assume that the registry data held by unmoderated domain administrators is the same as the registry data held for moderated domains (or vice versa). This is not the case; some SLDs do not require and/or maintain full registry data. ○ The Draft Regulations assume that the Alternative Dispute Resolution (ADR) process applies to all SLDs. The Minister has only approved the ADR process for a limited number of SLDs as per the ADR Regulations (Regulation 2(2)). ○ The Draft Regulations use "non-commercial" about Registries and Registrars, but these terms are not defined and do not seem to have a clear relationship to unmoderated and moderated domains. DNS is unaware of any current SLDs administered by commercial, for-profit entities. All of them are administered by non-profit or parastatal organisations of some form.
	<ul style="list-style-type: none"> ○ The collection of the data that the Draft Regulations make provision for is highly problematic for the following reasons: <ul style="list-style-type: none"> • In today's times of data privacy, this is a great concern to domain Registrants. • There is no mention of the collection format, data storing, data security, data deletion etc. • Registrants have proven that they will register the easiest TLD extension. • The EPP Registry protocol currently does not make provisions for this

	<ul style="list-style-type: none"> • All ~680 Registrars would need to change their development to accommodate this. ○ Revocation of Licence- The timeframe proposed is insufficient. ○ Privacy Concerns- Collection of ID Data conflicts with GDPR. ○ Accreditation Fees- Any additional fees imposed on the Registrar will have a direct cost bearing to the cost of a Registrant to register and/or renew a domain. ○ Licensing Criteria- this is mentioned but not outlined. ○ Access to Registrar Systems- Any information ZADNA may need regarding the Registrant can be gained from the Registry. ○ Grandfathering Registrars to new regulations- It is impracticable, unreasonable, and cost-prohibitive to expect Registrars to collect additional data on Registrants of existing domains as there are currently ~1 400 000 .ZA already registered
	<ul style="list-style-type: none"> ○ Most of our clients are in the SME market and are concerned that no mention is made of the costing – costing is a massive issue for many clients, as one can imagine, and it would be imperative to have this disclosed upfront. ○ Saving and sharing personal information is a massive challenge, as we will hold further personal data. We must update systems and procedures in place to accommodate the process, and this will, in turn, increase costs in a highly cost-conscious market. ○ The co.za space is imperative for the growth of all SMEs, and one should investigate the success of the .za.net environment and how beneficial the "free" domain service was for the industry – not saying free; however, it is essential to see the relation between cost and access and how that drives uptake. ○ Legislation and domain owners are covered well within POPI and would be a duplicate hurdle and concern to be bolstered with the .ZA environment.

11. DRAFT RRLR&P REVIEW

Consequent to the receipt of the inputs, ZADNA undertook an exercise to review the draft RRL&P which included the development of a legal opinion prior to the legal opinion that would be issued on request from the office of the State Law Adviser. The below provides consideration of the highly contested issues that came out of most of the submissions:

- 11.1. Collection of ID Documents/details** - ZADNA carried out independent research to assess the current practice in the collection and handling of registrant ID documents/details by .za SLD registrars. This was done through sampling from the pool of the .za registrar community and established an existing 98.6% collection rate amongst the 16 registrars sampled, comprising of top leading and bottom registrars. This led to maintaining the requirement with modifications to the requirements in the draft RRL&P.
- 11.2. License Fee** - ZADNA provided an indication of the License Fee to be charged for registrars and the manner for a review process as and when a fee modification may be required.
- 11.3. BBB-EE** – ZADNA noted the need to provide clarity regarding the requirements of BBB-EE, which led to the modification of the requirement per the annexures to make it clear for both local and international registrars.
- 11.4. Audits**- Over and above the contractual compliance for accredited Registrars, the related process of licence renewal must be qualified by an audit to promote and address any potential deficiencies for licenced Registrars. This would inform the consideration of renewal or non-renewal of licenses.

12. BENEFIT OF THE DRAFT RRLR&P FOR THE STAKEHOLDERS

12.1. ZADNA

12.1.1. Having the Draft RRLR&P will amplify ZADNA's stance in ensuring compliance with the legislative mandate, particularly in responding to enforcing section 64 of the ECTA regarding direct licensing of the Registries and Registrars.

12.1.2. There will be a centralised monitoring of the accreditation and licensing processes.

12.2. Registries and Registrars

12.3.1. ZADNA envisions an economic benefit from the Registries and Registrars from Domain Name registrations and renewals resulting from a secure namespace.

12.3.2. Enforcing the Draft RRLR&P will result in a solidified infringement recourse system where the concerted efforts of ZADNA, the Registries, and the Registrars will result in a decline in domain name abuse. This will, in turn, result in the prevention of monetary loss by registrants.

13. IMMINENT RISKS

ZADNA identified the following risks relating to putting the Draft RRLR&P in place:

13.1. Resistance from the Industry

The .za namespace having functioned without Regulations for thirty (30) years would result in some industry members not finding the need for Regulations. This was established to be accurate, particularly with the requirement by the Draft Draft RRLR&P for the collection of ID Document details at registration and renewal of domain names to curb domain name abuse.

ZADNA mitigated the above by assessing whether this was a foreign practice by Registrars and established that the top Registrars within the namespace collected the information at registration and managed to sustain their clientele.

13.2. Timely promulgation of the RRLR&P

As a result of the dependencies in the processes to have the Draft RRLR&P promulgated, a risk was imminent for the timely promulgation. The risk materialised. In mitigation, ZADNA requested an extension of the project, which was granted.

14. CONCLUSION

Having set out the rationale for the need for the Regulations, it has emanated from the Draft Regulations that there are varied views from the stakeholders, which called for further consideration of the Draft Regulations in their current state to determine areas of review and request an additional opinion on the Draft from the State Law Adviser.

-END-