

**Comments to the Draft gTLD Applicant Guidebook (April 2011 Discussion Draft)**

on behalf of Swiss Reinsurance Company Ltd, Zurich, Switzerland

Swiss Re is a leading and highly diversified global reinsurer. The company operates through offices in more than 20 countries. Founded in Zurich, Switzerland, in 1863, Swiss Re offers financial services products that enable risk-taking essential to enterprise and progress. The company's traditional reinsurance products and related services for property and casualty, as well as the life and health business are complemented by insurance-based corporate finance solutions and supplementary services for comprehensive risk management.

Insurance and Financial Sector – highly regulated and supervised

Insurance promotes economic activity in a number of ways: it promotes financial stability, strengthens the social safety net, and promotes efficient risk management and mitigation. The insurance industry, as part of the financial services sector, is highly regulated and supervised. Competent authority in Switzerland is the Swiss Financial Market Supervisory Authority (FINMA). Article 5 of the Financial Market Supervisory Act (FINMASA) defines FINMA's goals as follows: "In accordance with the financial market acts, financial market supervision has the objectives of protecting creditors, investors, and policy holders as well as ensuring the smooth functioning of the financial markets. It thus contributes to sustaining the reputation and competitiveness of Switzerland's financial centre". FINMA grants operating licenses to insurance companies and other market participants. Through its supervisory activities, FINMA also ensures that the supervised institutions comply with the requisite laws, ordinances, directives and regulations, and continue at all times to fulfil the licensing requirements.

The main purpose of insurance regulation is the protection of the policy holder¹ : Before an insurance company may commence business and issue policies, it needs approval and an appropriate operating license from the competent supervisory authority in the relevant territory² ; the same is true for insurance brokers³ . In the absence of appropriate permission, a company may not provide insurance services and a breach of this obligation may also incur criminal sanctions⁴.

Further, in many countries there are restrictions regarding the legally permissible use of the term "insurance" (and related or similar terms) in a company name and / or in the course of business to avoid any confusion or misunderstanding to the detriment of the consumers⁵; correspondingly, in Switzerland the use of the terms "bank", "banker" or "savings" in company names or in the course

¹ art. 1 paragraph 2 of Swiss Federal Act of 17 December 2004 on the Supervision of Insurance Companies (Insurance Supervision Act, ISA).

² as regards Switzerland cf. art. 3 ISA.

³ for Switzerland cf. art. 43 ISA.

⁴ as regards Switzerland cf. art. 87 ISA.

⁵ see eg in the UK: The Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009; or as regards Hong Kong: Insurance Companies Ordinance, Section 56A.



of business is restricted to businesses with the requisite license⁶. Similar provisions may apply to other regulated professions (eg attorneys) and industries. Also, the legislation against unfair competitions generally prohibits the use of any inaccurate or misleading designations, terms or titles in the course of business.

Need for strict rules regarding applications for gTLDs related to regulated sectors

Having regard for the special characteristics of the financial sector, it follows that not just any applicant for a gTLD should be admitted to delegation and to operate a gTLD that relates to a regulated profession or sector, rather only applicants with the requisite permission or support from the relevant supervisory authorities (eg evidenced by valid operating license, or letter of support as appropriate).

It is not only geographical designations that are sensitive in nature and, therefore, in need of special protection and safeguards in the upcoming application process for new gTLDs; special care should also be given to designations relating to regulated professions and sectors as the potential for damage and harm to society is high, including not only financial damage to individual consumers but also a loss of trust in the proper functioning (and supervision) of the financial industry and, as it were, e-commerce, the internet at large. It is instrumental that ICANN implement appropriate safeguards to mitigate the risks of sensitive strings being controlled or operated by inappropriate applicants.

Additional rules to mitigate risks and prevent consumer harm

The following rules and safeguards should be introduced to avoid consumer confusion and harm due to applications related to regulated sectors by inappropriate applicants; lack of such measures could well have a negative impact on the new gTLD programme as a whole:

- 1) Applicants for a gTLD that relates to a regulated profession, industry or sector (by way of illustration: .bank or .insurance, or .yourbrand-insurance) should be required to submit a written endorsement of their application by the relevant supervisory bodies or authorities (analogous to the required government support for geographical names), or a valid and in-force license to operate such business, and such applications should not be admitted to delegation absent such endorsement or valid license.
- 2) Further – analogous to community-based applications – regulated-sector related applications (by way of illustration: .bank or .insurance) should also be subject to certain post-delegation contractual obligations of the applicant to operate the gTLD register in a manner consistent with the restrictions associated with this regulated sector designation and to take adequate measures to avoid the risk of consumer confusion and harm. These obligations and protective measures should include but not be limited to the obligation to take ac-

⁶ art. 49 of the Swiss Federal Law of 8 November 1934 on Banks and Savings Banks (Banking Act, BA).



tion against a second level domain registrant, or suspend such registration(s) or service(s) upon intervention or complaint by a competent national regulatory or supervisory body.

- 3) As already proposed by the GAC, the application evaluation process should include review by governments, via the GAC explicitly also for applications relating to sectors that are subject to national regulation, ie the GAC Early Warning and GAC Advice on new gTLDs should also be applied to such applications. An intervention by a competent supervisory authority via the GAC should create a strong presumption for the ICANN Board that the subject application should not be approved.

- 4) The Limited Public Interest Objections should explicitly include objections based on national regulations for the protection of consumers and sector specific national regulations that are also intended as consumer protections.

The proposed Applicant Guidebook (April 2011 Discussion Draft) should not be approved absent such additional rules and safeguards.