



# Legal/Regulatory

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Protections –  
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AOB

# Registrant Protections – Background Information

## Principle D

*A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.*

This specifically relates to:

### **Risk Assessment & Contingencies :**

- Technical Evaluation - Adhere to DNS stability and security requirements, providing access to the widest variety of services.
- Technical contingencies - Critical Registry “Fallover” Functions (EBERO)
- Financial Evaluation - Demonstrate ability to understand and plan for business contingencies and afford some protections through the marketplace.
- Business Contingencies - COI Costing, LOCs
- Background Check - Criminal background checks on executives and officers

### **Application Scoring :**

- Used / emphasised by higher financial and technical scoring and criteria set in AGB. Q50 needed to get 3/3 score to ensure a financial pass score of 8 /11 .
- Had to achieve a score of 1 + on all questions . No zeros.

# Critical Registry Functions

Current Critical Registry Functions that are required by ICANN to be covered by an emergency back end registry operator during registry failover.

- DNS Resolution for registered domain names
- Operation of a Shared Registration System
- Operation of Registration Data Directory Services ( WHOIS)
- Registry Data Escrow Deposits
- Maintenance of a properly signed zone in accordance with DNSSEC requirements

# Critical Registry Functions

Question.

*Are the current Critical Registry Functions still sufficient or do changes need to be made?*

- A. Yes
- B. No
- C. Other \_\_\_\_\_

# Critical Registry Functions – Emergency Thresholds

The following matrix presents the emergency thresholds that, if reached by any of the services for a TLD, would cause the emergency transition of the Registry for the TLD.

<b>Critical Function</b>	<b>Emergency Threshold</b>
DNS Service (all servers)	4-hour total downtime / week
DNSSEC proper resolution	4-hour total downtime / week
EPP	24-hour total downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour total downtime / week
Data Escrow	Breach of the Registry Agreement as described in Specification 2, Part B, Section 6.

Upon reaching 10% of the Emergency thresholds as described above, ICANN's emergency operations will initiate an Emergency Escalation with the relevant Registry Operator.

\*All data excepted from RA

# Critical Registry Functions – Emergency Thresholds

Question.

*Has any registry gone above the Emergency Threshold before?*

- A. Yes
- B. No
- C. Other \_\_\_\_\_
- D. Ask ICANN for data

Question.

*Has the level of the Emergency Threshold ever been reached that would initiate an emergency escalation or EBERO?*

- A. Yes
- B. No
- C. Other \_\_\_\_\_
- D. Ask ICANN for data



# Critical Registry Functions – Cost Coverage

Cost coverage for an emergency escalation or the use of EBERO is currently calculated on a Domains Under Management (DUM) model. Costs can vary anywhere from 10,000 DUM under 18,000 USD to 300,000+ DUM under 300,000 USD.

Exact fee chart can be viewed on page 76 and 77 on EBERO contract page:

<https://www.icann.org/en/system/files/files/core-ebero-16aug13-en.pdf>

Question.

*Are these cost measurements still sufficient to cover the critical functions for EBERO?*

- A. Yes
- B. No
- C. Other \_\_\_\_\_

# Continued Operations Instrument

Specification 8 of the Registry Agreement requires that a registry shall have a Continued Operations Instrument (COI) to:

- cover the costs of the 5 Critical Registry Functions; and
- be for a time period of 3 years after termination of the RA on or prior to the 5<sup>th</sup> anniversary of the effective date but or for 1 year following any termination on or prior to the 5<sup>th</sup> anniversary but prior to or on the 6<sup>th</sup> anniversary of effective date of the RA (meaning 6 years after the RA is signed).

Question 50 of the AGB states that the COI needs to be in the form of:

- an irrevocable letter of credit; or
- irrevocable cash escrow deposit

# Continued Operations Instrument – Letter of Credit

- The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated).
- The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.
- Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions.
- To provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement.
- Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit.
- All payments must be marked with the issuing bank name and the bank's standby letter of credit number.
- LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument.
- The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent.

Question.

*Is the time period for the COI sufficient (i.e. 6 years from the execution date of the RA)?*

- A. Yes
- B. No
- C. Other \_\_\_\_\_

Question.

*Are the requirements for the Letter of Credit still sufficient?*

- A. Yes
- B. No
- C. Other \_\_\_\_\_

Question.

*Can other models besides the Letter of Credit and the Cash Escrow Deposit be considered for the COI requirements?*

- A. Yes
- B. No
- C. Other \_\_\_\_\_

# Considering when Registrant Protections don't apply

In the Preliminary Issue Report, the Discussion Group considered that registrant protections could be considered unnecessary when there are no registrants in the registry. This is presumably the case for the .Brands or other possible closed or exclusive use registries.



Question.

*Should more relevant rules be established for certain specific cases or categories of TLDs?*

- A. Yes
- B. No
- C. Other \_\_\_\_\_