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Dispute Resolution Policy

0. Introduction

This is the Dispute Resolution Policy for CAcert. Disputes arising out of operations by CAcert and interactions between users may be addressed through this policy. This document also presents the rules for resolution of disputes.

0.1 Nature of Disputes

Disputes include:

- Requests for non-routine support actions. CAcert support team has no authority to act outside the normal support facilities made available to Users;
- Classical disputes where a User or another assert claims and demand remedies;
- Requests by external organisations, including legal processes from foreign courts;
- Events initiated for training purposes.

1. Filing

1.1 Filing Party

Anyone may file a dispute. In filing, they become *Claimants*.

1.2 Channel for Filing

Disputes are filed by being sent to the normal support channel of CAcert, and a fee may be payable.

Such fees as are imposed on filing will be specified on the dispute resolution page of the website.

1.3 Case Manager

The Case Manager (CM) takes control of the filing.

1. CM makes an initial determination as to whether this filing is a dispute for resolution, or it is a request for routine support.
2. CM logs the case and establishes such documentation and communications support as is customary.
3. If any party acts immediately on the filing (such as an urgent security action), the CM names these parties to the case.
4. CM selects the Arbitrator.

The personnel within the CAcert support team are Case Managers, by default, or as directed by the Dispute Resolution Officer.

1.4 Contents

The filing must specify:

- The filing party(s), being the *Claimant(s)*.
- The party(s) to whom the complaint is addressed to, being the *Respondent(s)*. This will be CAcert in the case of requests for support actions. It may be a User (possibly unidentified) in the case where one User has given rise to a complaint against another.
- The *Complaint*. For example, a trademark has been infringed, privacy has been breached, or a user has defrauded using a certificate.
- The action(s) requested by the filing party (technically, called the *relief*). For example, to delete an account, to revoke a certificate, or to stop a trademark infringement.

If the filing is inadequate for lack of information or for format, the Case Manager may refile with the additional information, attaching the original messages.

1.5 The Arbitrator

The Case Manager selects the Arbitrator according to the mechanism managed by the Dispute Resolution Officer and approved from time to time. This mechanism is to maintain a list of Arbitrators available for dispute resolution. Each selected Arbitrator has the right to decline the dispute, and should decline a dispute with which there exists a conflict of interest. The reason for declining should be stated. If no Arbitrator accepts the dispute, the case is closed with status "declined."

Arbitrators are experienced Assurers of CAcert. They should be independent and impartial, including of CAcert itself where it becomes a party.

2. The Arbitration

2.1 Authority

The Board of CAcert and the Users vest in Arbitrators full authority to hear disputes and deliver rulings which are binding on CAcert and the Users.

2.2 Preliminaries

The Arbitrator conducts some preliminaries:

- The Arbitrator reviews the available documentation and affirms the rules of dispute resolution. Jurisdiction is established, see below.
- The Arbitrator affirms the governing law (NSW, Australia). The Arbitrator may select local law and local procedures where Claimants and all Respondents agree, are under such jurisdiction, and it is deemed more appropriate. However, this is strictly limited to those parties, and especially, CAcert and other parties remains under the governing law.
- The Arbitrator reviews the Respondents and Claimants with a view to dismissal or joining of additional parties. E.g., support personel may be joined if emergency action was taken.
- Any parties that are not Users and are not bound by the CPS are given the opportunity to enter into CAcert and be bound by the CPS and these rules of arbitration. If these Non-Related Persons (NRPs) remain outside, their rights and remedies under CAcert's policies and forum are strictly limited to that specified in the Non-Related Persons -- Disclaimer and Licence. NRPs may proceed with Arbitration subject to preliminary orders of the Arbitrator.
- Participating Users may not resign until the completion of the case.
- The Arbitrator confirms that all parties accept the forum of dispute resolution. This is especially important where a User might be in a country with no Arbitration Act in law, or

where there is reason to believe that a party might go to an external court.

- The Arbitrator confirms that parties are representing themselves. Parties are entitled to be legally represented, but are not encouraged to do so, bearing in mind the volunteer nature of the organisation and the size of the dispute. If they do so they must declare such, including any changes.
- The Arbitrator may appoint experienced Assurers to assist and represent parties, especially for NRPs. The Case Manager must not to provide such assistance.
- The Arbitrator is bound to maintain the balance of legal fairness.
- The Arbitrator may make any preliminary orders, including protection orders and orders referring to emergency actions already taken.
- The Arbitrator may request any written pleadings, counterclaim, and/or statements of defence.

2.3 Jurisdiction

Jurisidiction - the right or power to hear and rule on disputes - is initially established by clauses in the User agreements for all CAcert Users. The agreement must establish:

- That all Parties agree to binding Arbitration in CAcert's forum of dispute resolution;
- for all disputes relating to activities within CAcert, issued certificates, roles and actions, etc;
- as defined by these rules, including the selection of a single Arbitrator;
- under the Law of NSW, Australia; and
- the Parties keep email accounts in good working order.

An external court may have ("assert") jurisdiction to decide on issues such as trademark, privacy, contract and fraud, and may do so with legal remedies. These are areas where jurisdiction may need to be considered carefully:

- Where NRPs, being not members of CAcert and not bound by agreement, are parties to the dispute. E.g., intellectual property disputes may involve NRPs and their trademarks;
- criminal actions or actions likely to result in criminal proceedings, e.g., fraud;
- Contracts between Users that were formed without a clause to seek arbitration in the forum;
- Areas where laws fall outside the Arbitration Act, such as privacy;
- Legal process (subpoenas, etc) delivered by an external court of "competent jurisdiction."

The Arbitrator must consider jurisdiction and rule on a case by case basis whether jurisdiction is asserted, either wholly or partially, or declines to hear the case. In the event of asserting jurisdiction, and a NRP later decides to pursue rights in another forum, the Arbitrator should seek the agreement of the NRP to file the ruling as part of the new case.

2.4 Basis in Law

Each country generally has an Arbitration Act that elevates Arbitration as a strong dispute resolution forum. The Act generally defers to Arbitration if the parties have so agreed. That is, as Users of CAcert, you agree to resolve all disputes before CAcert's forum. This is sometimes called *private law* or *alternative dispute resolution*.

As a matter of public policy, courts will generally refer any case back to Arbitration. Users should understand that they will have strictly limited rights to ask the courts to seek to have a case heard or to override a Ruling.

2.5 External Courts

When an external court claims and asserts its jurisdiction, and issues a court order, subpoena or

other service to CAcert, the CM files the order as a dispute, with the external court as *Claimant*. The CM and other support staff are granted no authority to act on the basis of any court order, and ordinarily must await the order of the Arbitrator (which might simply be a repeat of the external court order).

The Arbitrator establishes the bona fides of the court, and rules. The Arbitrator may rule to reject the order, for jurisdiction or other reasons. By way of example, if all Parties are registered Users, then jurisdiction more normally falls within the forum. If the Arbitrator rules to reject, he should do so only after consulting with CAcert counsel. The Arbitrator's jurisidiction is ordinarily that of dealing with the order, and not that which the external court has claimed to.

2.6 Process

The Arbitrator follows the procedure:

1. Establish the facts. The Arbitrator collects the evidence from the parties. The Arbitrator may order CAcert or Users under jurisdiction to provide support or information. The Arbitrator may use email, phone or face-to-face meetings as proceedings.
2. Apply the Rules of Dispute Resolution, the policies of CAcert and the governing law. The Arbitrator may request that the parties submit their views. The Arbitrator also works to the mission of CAcert, the benefit of all Users, and the community as a whole. The Arbitrator may any assistance.
3. Makes a considered Ruling.

3. The Ruling

3.1 The Contents

The Arbitrator records:

1. The Identification of the Parties,
2. The Facts,
3. The logic of the rules and law,
4. The directions and actions to be taken by each party (the ruling).
5. The date and place that the ruling is rendered.

3.2 Process

Once the Ruling is delivered, the case is closed. The Case Manager is responsible for recording the Ruling, publishing it, and advising users.

Proceedings are ordinarily private. The Ruling is ordinarily published, within the bounds of the Privacy Policy. The Ruling is written in English.

Only under exceptional circumstances can the Arbitrator declare the Ruling private *under seal*. Such a declaration must be reviewed in its entirety by the Board, and the Board must confirm or deny that declaration. If it confirms, the existance of any Rulings under seal must be published to the Users in a timely manner (within days).

3.3 Binding and Final

The Ruling is binding and final on CAcert and all Users. Ordinarily, all Users agree to be bound by

this dispute resolution policy. Users must declare in the Preliminaries any default in agreement or binding.

If a person who is not a User is a party to the dispute, then the Ruling is not binding and final on that person, but the Ruling must be presented in filing any dispute in another forum such as the person's local courts.

3.4 Re-opening the Case or Appeal

In the case of clear injustices, egregious behaviour or unconscionable Rulings, parties may seek to re-open the case by filing a dispute. The new Arbitrator reviews the new dispute, re-examines and reviews the entire case, then rules on whether the case may be re-opened or not.

If the new Arbitrator rules the case be re-opened, then it is referred to the Board of CAcert Inc. The Board hears the case and delivers a final and binding Ruling.

3.5 Liability

All liability of the Arbitrator for any act in connection with deciding a dispute is excluded by all parties, provided such act does not constitute an intentional breach of duty. All liability of the Arbitrators, CAcert, its officers and its employees (including Case Manager) for any other act or omission in connection with arbitration proceedings is excluded, provided such acts do not constitute an intentional or grossly negligent breach of duty.

The above provisions may only be overridden by appeal process (by means of a new dispute causing referral to the Board).

3.6 Remedies

The Arbitrator generally instructs using internal remedies, that is ones that are within the general domain of CAcert, but there are some external remedies at his disposal. He may rule and instruct any of the parties on these issues.

- "community service" typically including
    - attend and assure people at trade shows / open source gatherings,
    - writing documentation
    - serve in role - support, dispute arbitration
  or others as decided.
- Fined by loss of assurance points, which may result in losing Assurer or Assured status.
- Retraining in role.
- Revoking of any certificates.
- Monetary fine up to the liability cap established for each party as described in the Registered User Agreement.
- Exclusion from community.
- Reporting to applicable authorities.
- Changes to policies and procedures.

The Arbitrator is not limited within the general domain of CAcert, and may instruct novel remedies as seen fit. Novel remedies outside the domain may be routinely confirmed by the Board by way of appeals process, in order to establish precedent.

4. Appendix

4.1 The Advantages of this Forum

The advantage of this process for Users is:

- CAcert and Users operate across many jurisdictions. Arbitration allows us to select a single set of rules across all jurisdictions.
- Arbitration allows CAcert to appropriately separate out the routine support actions from difficult dispute actions. Support personnel have no authority to act, the appropriately selected Arbitrator has all authority to act. Good governance is thus maintained.
- This forum allows CAcert Users to look after themselves in a community, without exposing each other to potentially disastrous results in strange courts from foreign lands.
- By volunteering to resolve things "in-house" the costs are reduced.
- Even simple support issues such as password changing can be improved by treating as a dispute. A clear chain of request, analysis, ruling and action can be established.
- CAcert Assurers can develop the understanding and the rules for sorting out own problems far better than courts or other external agencies.

4.2 The Disadvantages of this Forum

Some disadvantages exist.

- Users may have their rights trampled over. In such a case, the community should strive to re-open the case and refer it to the board.
- Users may feel overwhelmed by the formality of the process. It is kept formal so as to establish good and proper authority to act; otherwise, support and other people in power may act without thought and with damaging consequences.
- A country may not have an Arbitration Act. In that case, the parties should enter into spirit of the forum. If they choose to break that spirit, they should also depart the community.

4.3 Process and Flow

To the extent reasonable, the Arbitrator conducts the arbitration as with any legal proceedings. This means that the process and style should follow legal tradition.

However, the Arbitrator is unlikely to be trained in law. Hence, common sense must be applied, and the Arbitrator has wide latitude to rule on any particular motion, pleading, submission. The Arbitrator's ruling is final within the arbitration.

Note also that many elements of legal proceedings are deliberately left out of the rules.