

**AFRINIC RIR ACCOUNTABILITY
PROPOSED BYLAWS CHANGES**

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As a result of AFRINIC's accountability assessment undertaken in late 2015 and early 2016, several potential areas for improvement were identified. The issues were presented to the community during the AFRINIC-24 meeting in Gaborone, Botswana, in June 2016.

This document takes subsequent discussion into account and suggests changes to the Bylaws.

1. Lack of clarity on whether or not Associate Members may vote: The Bylaws section 7.2(i) gives Members (presumably including Associate Members) the power to elect Directors; 7.4 states that Associate Members are observers at meetings (which may be interpreted to remove other rights); 7.5 lists a few rights of Associate Members (which may be interpreted to remove other rights); 7.6 gives certain rights to Registered Members and Resource Members (clearly excluding Associate Members) and these rights include the right to vote on certain special and ordinary resolutions; 13.7(i) states that Directors are elected by Resource Members and Registered Members. It is clear that the rights in 7.6 are not granted to Associate Members, but there is a **conflict between 7.2(i) and 13.7(i) on whether or not Associate Members may vote** in elections for Directors. This conflict must be resolved one way or another.

We need to decide whether or not Associate Members should vote, and modify the Bylaws to give effect to that decision.

Result from discussion: Associate Members should not be entitled to vote.

Proposed change to Bylaws:

Add a new article 6.5 as follows:

6.5 Associate Member

A legal entity, as listed and defined in Art (1) of the bylaws which

- (a) has manifested a substantial interest in the Internet Number Resources management and in the mission of AFRINIC
- (b) does not use assigned number resources
- (c) does not have the right to vote at any AFRINIC meetings
- (d) attends any meetings convened by AFRINIC, strictly, in an observer

capacity.

Modify article 7.2(i), changing “The Members shall be entitled:” to “The Registered Members and Resource Members shall be entitled:”.

2. Interchangeable use of the terms “Bylaw” or “Bylaws” and “Constitution”: The Mauritian Companies Act refers to a “Constitution” of a company, but AFRINIC sometimes refers to the document as the Bylaws and sometimes as the Constitution. Suggest adding a clause 1.3 to **clarify that this document may be referred to by the term “Bylaws” or “Constitution”, and is intended to serve the function of the Constitution in terms of the Companies Act of Mauritius.**

Result from discussion: No objection. However, the legal advisor suggests changes to the definitions in article 1 without adding a new article 1.3

Proposed change to Bylaws:

In article 1, add a new definition of “Bylaws” (to be inserted in alphabetical order), and modify the definition of “Constitution”:

Bylaws: this Constitution, as adopted and amended from time to time in accordance with the Act.

Constitution: This Constitution, also referred to as the Bylaws, as adopted and amended from time to time in accordance with the Act.

3. Clarification that all Registered Members in terms of Bylaws 6.3, and only such Registered Members, must be registered in terms of the Companies Act as members of the company.

Result from discussion: No objection.

Proposed change to Bylaws:

In article 6.3, add a heading and additional paragraphs 6.3(a) and 6.3(b) as follows:

6.3 Registered Member - An individual who shall be elected as Director in accordance with Article 13 below. The Chief Executive Officer shall automatically also be appointed as a Registered Member, provided that the said individual shall sign such forms as may be prescribed by the laws of Mauritius and to contribute Rs 500 (Five hundred Mauritian rupees only) in the event of the company being wound up according to Article 22.

- (a) For the avoidance of doubt, Registered Members shall be the only legal entities entitled to have their names entered on the list of members of AFRINIC filed or to be filed with the Registrar of Companies in compliance with the Act.
 - (b) A Director whose tenure of office comes to an end, shall de facto cease to be a Registered Member and shall complete all the required formalities in compliance with the Act and/or the bylaws to this effect.
- 4. Article 13.5 contains two paragraphs that should be two separate articles for clarity.

Proposed change to Bylaws:

Split the two paragraphs of Article 13.5 into two articles, numbered 13.5 and 13.6. Re-number all subsequent articles and adjust all cross-references as appropriate.

The resulting text in articles 13.5 to 13.6 will be:

13.5 Each of the following six sub-regions of Africa shall be represented by one director as indicated below:

- (i) Northern Africa (seat 1);
- (ii) Western Africa (seat 2);
- (iii) Indian Ocean (seat 3);
- (iv) Central Africa (seat 4);
- (v) Southern Africa (seat 5); and
- (vi) Eastern Africa (seat 6).

13.6 Each Director elected under Articles 13.4(i) and 13.4(ii) of this Constitution shall hold office for a term of three years, which term of office shall expire on the date of the Annual General Members' Meeting held on or around the third anniversary of the date of appointment of such Elected Director. Subject to Article 13.8, such Director shall be eligible for re-election on the expiry of his term of Office.

- 5. Regional representation: Consider modifying 13.5 to state that Directors must **act in the interests of AFRINIC as a whole**, regardless of their regional affiliation.

Result from discussion: No objection.

Proposed change to Bylaws:

Insert a new article 13.6 as shown below, in between what used to be the two paragraphs of article 13.5. Re-number all subsequent articles and adjust all cross-references as appropriate.

The resulting text in articles 13.5 to 13.7 will be:

13.5 Each of the following six sub-regions of Africa shall be represented by one director as indicated below:

- (i) Northern Africa (seat 1);
- (ii) Western Africa (seat 2);
- (iii) Indian Ocean (seat 3);
- (iv) Central Africa (seat 4);
- (v) Southern Africa (seat 5); and
- (vi) Eastern Africa (seat 6).

13.6 Notwithstanding the regional criterion of elections of Directors for seats 1 to 6 (both inclusive) as specified in Article 13.4(i) and 13.5, all Directors so elected, shall exercise their powers in accordance with the Act and always act in good faith and solely in the best interests of the company.

13.7 Each Director elected under Articles 13.4(i) and 13.4(ii) of this Constitution shall hold office for a term of three years, which term of office shall expire on the date of the Annual General Members' Meeting held on or around the third anniversary of the date of appointment of such Elected Director. Subject to Article 13.8, such Director shall be eligible for re-election on the expiry of his term of Office.

6. Term limits: Consider adding a term limit for elected Board members.

We need to decide whether or not to add a limit, and what the limit should be.

Result from discussion: No consensus, but several suggestions for different limits have been made.

The text below proposes a limit of two consecutive three-year terms, and a three-year waiting period before being eligible again.

Proposed change to Bylaws:

Rewrite the paragraph on terms and re-election as follows. The relevant paragraph used to be the second paragraph of Article 13.5, but will now be Article 13.7 if all the above amendments are accepted.

13.7 Each Director elected under Articles 13.4(i) and 13.4(ii) of this Constitution shall hold office for a term of three years, which term of office shall expire on the date of the Annual General Members' Meeting held on or about the third anniversary of the date of appointment of such elected Director. Subject to Article 13.6, and subject to the term limits in this Article, such Director shall be eligible for re-election on the expiry of his term of office. No elected Director shall serve more than two consecutive terms of office. After an elected Director completes two consecutive terms of office, there shall be a three-year period during which such Director is not eligible for re-election.

7. Independence of Directors: Consider adding a limit to the number of Directors who may work for the same organisation.

We need to decide whether or not to add a limit, and what the limit should be.

Result from discussion: No consensus, but several suggestions for different limits have been made.

The text below proposes a limit of two elected Directors from the same or related organisations, no more than two from the same sub-region, and no more than two from the same country.

Proposed change to Bylaws:

Insert a new paragraph or article as follows, immediately after the paragraph or article dealing with terms and re-election, and immediately before what used to be article 13.6. If all the above amendments are accepted, then the new article will be number 13.8, and what used to be 13.6 will become 13.9. Re-number all subsequent articles and adjust all cross-references as appropriate.

13.7 Each Director elected under Articles 13.4(i) and 13.4(ii) [...]

13.8 The tenure of office as elected Director shall be subject to the following limitations:

(a)-Not more than two elected Directors shall be employed by the same company, organisation, or group of related companies or organisations (as defined in Section 2 of the Companies Act) during any period of tenure of office.

(b)-Not more than two elected Directors shall reside in the same sub-region as listed in article 13.5 of these bylaws during any period of tenure of office.

(c)-Not more than two elected Directors shall reside in the same country during any period of tenure of office.

For the avoidance of doubt, the limitations enumerated in the above

paragraph, shall not apply to the CEO.

13.9 For the avoidance of doubt, the sequential election of Directors [...]

8. Conflict of interest: Consider adding a requirement for Directors to disclose any conflict of interest, and to **recuse themselves from voting on any matter where they have a conflict of interest.**

Result from discussion: No objection.

Proposed change to Bylaws:

Add a new article 15.6 after the existing article 15.5:

15.6 A director of the company shall, where he is interested in a transaction or proposed transaction with the company, disclose such interest to the Board. The interested director shall recuse himself from voting on any matter relating to the transaction.

9. Separation of powers: Consider adding a requirement that **no more than one key position** (Board Chair, Vice Chair, Chief Executive Officer, Chief Financial Officer) may be occupied by the same person.

Result from discussion: No objection.

Proposed change to Bylaws:

Add a new article 15.7 after the new article 15.6 proposed above:

15.7 No person may hold more than one of the following positions within the company:

- (a) Chairperson of the Board;
- (b) Vice Chairperson of the Board;
- (c) Chief Executive Officer;
- (d) Chief Financial Officer.

10. Replacement of Directors: The bylaws sections 13.1, 13.8, 13.10, and 13.14 give different methods of replacing Directors for different reasons. **Consider harmonising this.**

Result from discussion: No objection.

Proposed change to Bylaws:

Replace article 13.1 with the following text:

13.1 Subject to the provisions of Article 11 of the present Constitution, the Board shall call a meeting of members to appoint the Directors of the company where vacancies occur as a result of:

- (i) the expiry of the term of office of any Director;
- (ii) The removal or resignation of any Director in terms of Article 14 of this Constitution;
- (iii) The disqualification of any Director in terms of Article 13.10 of this Constitution;
- (iv) The untimely death of any Director;
- (v) The filling of a casual vacancy in terms of Article 13.14.

In article 13.8, delete sub-paragraphs (ii) and (iii), and remove the now-unnecessary label “(i)”. The result will be as follows:

13.8 In the event that there is no eligible candidate for a particular seat, the Director already in office in the particular seat shall be deemed to be re-appointed for the period ending with the date of the next election for that particular seat.

11. Board approval of nominations: The Board can approve or disapprove nominations for Board elections in terms of the Bylaws section 12.14(i). **Consider requiring a supermajority** of two thirds of the Board to disapprove any nomination.

Result from discussion: The Board should not have the power to disapprove nominations.

Proposed change to Bylaws:

Replace the second paragraph of article 12.14(i) with the following text, removing the requirement for nominations to “be approved by the Board”, and making minor changes for clarity:

Such nominations shall be subject to the Election Guidelines document, and shall, *inter alia*, contain the full name and address of the nominated person, a short description of the person including the person’s professional background, age, nationality and residential address, and either the region which the person is proposed to represent, or an indication that the nomination is for a non-regional seat.

12. Modification to the Bylaws or Constitution: The Bylaws say how the AFRINIC Members may change the Bylaws, but the Companies Act say that the Registered Members can change it. Consider requiring that the **Bylaws/Constitution may be changed only after a Special Resolution by all**

AFRINIC Members in terms of Bylaws 7.6(vi), so that the Registered Members (the same nine people as the Directors) cannot act without broader approval.

Result from discussion: No objection.

Proposed change to Bylaws:

Add a new Article 7.7 as follows:

7.7 For the purposes of these bylaws, it is hereby stated that only Registered and Resource members, acting jointly within the context of an AGMM or SGMM in terms of Article 7.6(vi), shall be entitled to consider and approve by special resolution proposals for the revocation, amendment or replacement of these bylaws.

13. Policies introduced by the Board: In terms of the Bylaws section 11.4, the Board may adopt policy changes that did not go through the normal PDP. **Consider giving the community the right to reject such policy changes introduced by the Board.**

Result from discussion: No objection.

Proposed change to Bylaws:

Replace article 11.5 with the following text:

11.5 Endorsement of policy adopted by the Board:
(i) Any policy adopted by the Board under the provisions of Article 11.4 shall be submitted to the community for endorsement at the next public policy meeting.
(ii) In the event that the Community does not endorse the policy submitted to it by the Board under Article 11.5(i), the said policy shall not be enforced or implemented following its non-endorsement by the Community; however, any actions taken in terms of the policy prior to submission to the Community shall remain valid.

14. Consultation before fee changes: Consider requiring the Board to consult the members and notify the community before changing fees.

Proposed change to Bylaws:

Replace article 4.2 with the following text:

4.2 (i) The fees mentioned in Article 4.1 above shall be subject to review from time to time by the Board.

(ii) Any review of fees in terms of this Article shall be effected after consultation with Members, and after a notification period, to the community, of not less than two months.

15. Harmonise 13.4(i) and 13.4(ii): One of these mentions “upon the recommendation of the NomCom” and one does not.

Proposed change to Bylaws:

Add “upon the recommendation of the NomCom, acting in compliance with the election guidelines” to both 13.4(i) and (ii), as follows:

13.4 The Board shall comprise of nine (9) Directors appointed as follows:

- (i) Six Directors elected by the Annual General Members’ Meeting called under Article 11.1 of this Constitution, upon the recommendation of the NomCom, acting in compliance with the election guidelines, to represent each of the sub-regions listed in Article 13.5 (Seats 1 to 6);
- (ii) Two Directors elected by the Annual General Members’ Meeting called under Article 11.1 of this Constitution, upon the recommendation of the NomCom, acting in compliance with the election guidelines, based upon their competencies and not their regional representation (Seats 7 and 8); and
- (iii) The Chief Executive Officer (Seat 9).

16. Give the Members the power to recall a Director.

Proposed change to Bylaws:

Insert a new sub-article 14.1(iv) after the existing 14.1(iii), and re-number the subsequent sub-articles as appropriate; Add a new article 14.2 as follows.

14.1 A Director shall hold office until:

- (i) [...]
- (ii) [...]
- (iii) [...]
- (iv) he/she is removed in terms of Article 14.2;
- (v) [previous part (iv) re-numbered to (v)]
- (vi) [previous part (v) re-numbered to (vi)]

14.2 A Director may be removed by a special resolution of Registered Members and Resource Members passed at an Annual General Member Meeting, provided:

- (i) At least 10% of all Registered Members and Resource Members petition for the special resolution to be included in the agenda of the

meeting;

(ii) The Director who is the subject of the special resolution is given the opportunity to be heard at the meeting;

(iii) The special resolution is passed with a supermajority of no less than 75% of all votes cast.

17. Difficulty in approving the financial statements: Article 7.6(i) of the Bylaws says that the AGMM approves the financial statements. This caused a difficulty in 2016 where the Board believed that they could not sign the financial statements before approval, and the Auditors could not sign the audit report before signature by the Board. It also conflicts with the Companies Act, which says that the AGMM adopts the financial statements.

Proposed change to Bylaws:

Change 7.6(i) from “consider and approve” to “consider and adopt”, as follows:

7.6 The Registered Members and Resource Members shall [...] have the right to:

(i) consider and adopt by Ordinary Resolution the financial statements of the company;

[...]