



ADDENDUM TO SGMM2016 AGENDA ITEM 2.0 SPECIAL RESOLUTIONS PROPOSED BY ALAN BARRETT, AFRINIC CEO

AFRINIC Proposed Bylaws Changes

The following changes to AFRINIC's Bylaws are proposed as special resolutions to be decided at the AFRINIC Special General Members' Meeting on 30 November 2016.

Several proposals include square brackets as placeholders for article numbers or text that will not be known until after voting on the special resolutions. Article numbers or text will be adjusted as appropriate according to which resolutions pass or fail.

1. Special Resolution 1 (SR1)

Clarify that Associate Members may not vote.

Add a new article 6.5 as follows:

- 6.5 **Associate Member** - A legal entity, as listed and defined in Article 1 of the Bylaws, which
- (i) has manifested a substantial interest in the Internet Number Resources management and in the mission of AFRINIC;
 - (ii) is not a Resource Member of AFRINIC;
 - (iii) has been approved by the Board or the Members in terms of Article 6.1(ii);
 - (iv) has paid the relevant setup and membership fees.

Also modify article 7.2(i), changing from:

7.2(i) The Members shall be entitled: [...]

to:

7.2(i) The Registered Members and Resource Members shall be entitled: [...]

2. Special Resolution 2 (SR2)

Clarify that the terms “Bylaws” or “Constitution” may be used interchangeably.

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

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. Special Resolution 3 (SR3)

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

In article 6.3, add a heading and additional paragraphs 6.3(i) and 6.3(ii) 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.

- (i) 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.
- (ii) 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. Special Resolution 4 (SR4)

State that Directors must act in the interests of AFRINIC as a whole, regardless of their regional affiliation.

In Article 13.4(i) and in the first paragraph of article 13.5, say that Directors shall be “chosen from” sub-regions, not that they “represent” sub-regions.

Add 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 13.4(i) and articles 13.5 to 13.7 will be:

13.4(i) [changed text] Six Directors elected by the Annual General Members’ Meeting called under Article 11.1 of this Constitution to be chosen from each of the regions listed in Article 13.5 (Seats 1 to 6);

13.5 [changed first sentence] One Director shall be chosen from each of the following six sub-regions of Africa, 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 [new article to be inserted] 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 [new number, with no change from previous text] 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 [new number for what used to be 13.6], such Director shall be eligible for re-election on the expiry of his term of Office.

5. **Special Resolution 5 (SR5)**

Split the two paragraphs of Article 13.5 into two separate articles for clarity.

If the above proposal 4 passes, then the relevant change will already have been made, and this proposal will be ignored. If the above proposal fails, then split the two paragraphs of Article 13.5 into two articles, keeping the text unchanged. Re-number all subsequent articles and adjust all cross-references as appropriate.

The result will be:

13.5 [no change from previous text] 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 [new number, with no change from previous text] 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 [new number for what used to be 13.7], such Director shall be eligible for re-election on the expiry of his term of Office.

6. **Special Resolution 6 (SR6)**

Introduce term limits for Directors.

Add a new article on term limits as follows, in between the existing Articles 13.5 and 13.6. If all the above amendments are accepted then the new article will be number 13.8.

[13.8 or other number for new article] No Director elected or appointed to any of the seats referred to in Articles 13.4(i) or 13.4(ii) shall serve more than two consecutive terms of office. After a person completes two consecutive terms of office as such a Director, there shall be a three-year

period during which such person is not eligible to be elected or appointed to any such seat.

Add a reference to the term limits in the sentence on re-election. The relevant sentence used to be in the second paragraph of Article 13.5, but may now be in Article 13.6 or 13.7 depending on which of the above amendments are accepted.

Change from:

Subject to Article [13.6], such Director shall be eligible for re-election on the expiry of his term of office.

Change to:

Subject to Article [13.8 or other new number for the new article on term limits] and Article [13.9 or other new number for what used to be 13.6], such Director shall be eligible for re-election on the expiry of his term of office.

If this proposal and all previous proposals pass, then the result will be:

[13.7 or other new number for what used to be the second paragraph of 13.5] 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 [13.8 or other new number for the new article on term limits] and Article [13.9 or other new number for what used to be 13.6], such Director shall be eligible for re-election on the expiry of his term of office.

[13.8 or other number for new article on term limits] No Director elected or appointed to any of the seats referred to in Articles 13.4(i) or 13.4(ii) shall serve more than two consecutive terms of office. After a person completes two consecutive terms of office as such a Director, there shall be a three-year period during which such person is not eligible to be elected or appointed to any such seat.

7. Special Resolution 7 (SR7)

Limit the number of Directors who may work for the same organisation or reside in the same region.

Insert a new 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.

[13.8 or other new number for new article] The tenure of office of a Director elected under Articles 13.4(i) and 13.4(ii) shall be subject to the following limitations:

- (i) 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.
- (ii) 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.
- (iii) In the event of the need to decide which Director should remain or be elected, and which Director should resign or not be elected, in order to ensure compliance with sub-articles (i) or (ii) above, then:
 - (a) A Director who changes his/her employment or sub-region of residence during his/her term shall have lower priority than another Director;
 - (b) Sitting Directors shall have priority over candidates who have been elected Director but not yet taken their seat;
 - (c) Where the conflict is between candidates in two or more elections conducted simultaneously, the regional seats 1 to 6 shall have priority over the non-regional seats 7 and 8.

8. Special Resolution 8 (SR8)

Add 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.

Add a new article 15.5 after the existing article 15.4:

[15.5 or other new number for new article] Conflict of interest:

- (i) A Director of the company shall, where he/she has a potential or actual conflict of interest in any matter brought before the Board, disclose such potential or actual conflict to the Board.
 - (ii) The said Director shall recuse himself/herself from voting on any such matter before the Board where such a conflict exists or may exist.
 - (iii) The remaining members of the Board may decide that said Director should be excluded from discussion of such matter where a conflict exists or may exist.
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9. Special Resolution 9 (SR9)

Add a requirement that no more than one key position may be occupied by the same person.

Add a new article 15.6 after the new article 15.5 proposed above (or a new article 15.5, in the event that the above proposal does not pass):

[15.6 or other new number for new article] No person may hold more than one of the following positions within the company:

- (i) Chairperson of the Board;
 - (ii) Vice Chairperson of the Board;
 - (iii) Chief Executive Officer;
 - (iv) Chief Financial Officer.
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10. Special Resolution 10 (SR10)

Harmonise the methods of replacing Directors for different reasons.

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 what used to be article 13.8 (which might now be numbered 13.9 or 13.10, depending on which of the above proposals passes), delete sub-paragraphs (ii) and (iii), and remove the now-unnecessary label “(i)”. Also make the automatic re-appointment for a shorter period, only until the next scheduled election for any seat (about one year), not until the next scheduled election for this seat (about three years). The result will be as follows:

[13.10 or other new number for what used to be 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 scheduled election for any seat.

11. Special Resolution 11 (SR11)

Remove the ability for the Board to disapprove nominations for Board elections.

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. Special Resolution 12 (SR12)

Prevent modification to the Bylaws or Constitution by the Registered Members acting without support of the Resource Members.

Add a new Article 7.7 as follows:

7.7 For the purposes of these Bylaws, it is hereby stated that only Registered Members 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. Special Resolution 13 (SR13)

Clarify the process of endorsement for policies introduced by the Board in terms of the Bylaws section 11.4.

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 such a policy submitted by the Board is not endorsed, the said policy shall not be enforced or implemented following its non-endorsement; however, any actions taken in terms of the policy prior to such non-endorsement shall remain valid.
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14. Special Resolution 14 (SR14)

Require consultation before the Board changes the fees.

Replace article 4.2 with the following text:

- 4.2 Review of fees:
- (i) The fees mentioned in Article 4.1 above shall be subject to review from time to time by the Board.
 - (ii) Before finalising any changes in fees, the Board shall consult the Members and the community, and allow at least 60 days for comments.
 - (iii) After the Board finalises any changes in fees, the new fees shall take effect after a notification period, to Members and the community, of not less than 60 days.
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15. Special Resolution 15 (SR15)

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

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, or to be chosen from, depending on whether or not proposal 4 above passes] 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. Special Resolution 16 (SR16)

Give the Members the power to recall a Director.

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) [no change from previous text]
 - (ii) [no change from previous text]
 - (iii) [no change from previous text]
 - (iv) [new sub-article] 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 [new article] A Director other than the Chief Executive Officer 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. Special Resolution 17 (SR17)

Resolve a difficulty in approving the financial statements, so that the Board may sign the financial statements and the auditors may sign the audit report before the AGMM.

In Article 7.6(i), change from “consider and approve” to “consider and adopt”.
The result will be as follows:

7.6 The Registered Members and Resource Members shall, at Annual General Members’ Meetings or by way of written resolutions, in addition to the rights conferred by Articles 7.1 and 7.2, have the right to:

- (i) consider and adopt by Ordinary Resolution the financial statements of the company;
- (ii) [no change from previous text]

18. Special Resolution 18 (SR18)

Remove the limit of five proxies per person.

Delete Article 12.12(viii). Re-number subsequent sub-articles as appropriate.

Text to be deleted:

12.12(viii) No member entitled to vote during an election held by the Company shall carry more than five (5) proxies during the said election;

19. Special Resolution 19 (SR19)

Remove the restriction that a candidate cannot carry any proxies.

Delete Article 12.12(ix).

Text to be deleted:

12.12(ix) No Candidate to the election of Director of the Company shall act as proxy for any member during such an election.

20. Special Resolution 20 (SR20)

Clarify when the limit of five proxies per person applies.

If proposal 18 above is passed (removal of limit of five proxies per person), then this proposal will be ignored. If proposal 18 above fails, then modify Article 12.12(viii) as follows, to conform to the interpretation that proxies issued by or on behalf of Registered Members are not limited, and proxies issued by or on behalf of Resource Members are limited, even if the person carrying the proxy is not a member.

Change from:

12.12(viii) No member entitled to vote during an election held by the Company shall carry more than five (5) proxies during the said election;

Change to:

12.12(viii) During an election held by the Company, no person shall carry proxies on behalf of more than five (5) Resource Members;