

# AFRINIC PROPOSED BYLAWS CHANGES

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

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

1. 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

- (a) has manifested a substantial interest in the Internet Number Resources management and in the mission of AFRINIC;
- (b) is not a Resource Member of AFRINIC;
- (c) has been approved by the Board or the Members in terms of Article 6.1(ii);
- (d) 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. 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":

**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. Clarify 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.

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

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 [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 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. Split Article 13.5 into separate articles for clarity.

If the above proposal 4 passes, then the relevant change will already have been made. 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. Introduce term limits for Directors.

Introduce term limits to the paragraph on terms and re-election as follows. The

relevant paragraph used to be the second paragraph of Article 13.5, but may now be 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 what used to be 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.

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

[13.7 as 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 what used to be 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. 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:

- (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) 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 avoid violation of sub-articles (a) or (b) above, then:
  - (i) A Director who changes his/her employment or sub-region of residence during his/her term shall have lower priority than another Director;
  - (ii) Sitting Directors shall have priority over candidates who have participated in an election but not yet taken their seat;
  - (iii) 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. 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 15.6 after the existing article 15.5:

[15.6 or other new number for new article] A director of the company shall, where he/she has a potential conflict of interest in any item brought before the Board, disclose such potential conflict to the Board. Said Director shall recuse himself/herself from voting on any such matter before the Board where a conflict exists.

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

Add a new article 15.7 after the new article 15.6 proposed above (or a new article 15.6, in the event that the above proposal does not pass):

[15.7 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.

10. 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. 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. 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 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. 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:

- (a) 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.
- (b) 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.

14. 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 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 the community, of not less than 60 days.

15. 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 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.

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) 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 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. 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.

Change 7.6(i) from “consider and approve” to “consider and adopt”, 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]