

AFRINIC Bylaws (Constitution) 2020

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Preface

I am pleased to introduce the fifth version of the AFRINIC Bylaws, also known as the Constitution of AFRINIC, which took effect in December 2020. This version of the Bylaws replaces the previous version that had been in effect since December 2016.

The changes between the previous version and this version arise from a community consultation exercise. The Governance Committee invited the community to propose amendments to our bylaws to align and strengthen its current provisions. Special Resolutions were proposed at the AFRINIC Annual General Members' Meeting that was held online on 18 September 2020. Fourteen of the Special Resolutions achieved the required 75% majority vote.

The changes include:

- Amendment to the section 'Associate Membership' (article 1.1).
- Amendment to the section 'Board' (article 1.1).
- Amendment to the section 'Company' (article 1.1).
- Amendment to the section 'Name' (article 2.1).
- Amendment to the section 'Registered office' (article 5.1).
- Amendments to the section 'Membership' (article 6.1).
- Amendments to the section 'Powers of Members' (article 7.2).
- Addition of a new section 9.1A under 'Nomination Committee' (article 9.1).
- Amendment to the section 'Proceedings at Annual General Members Meeting' [article 12.7]
- Amendment to the section 'Proxies' [article 12.12 (i)]
- Amendment to the section 'Appointment of Directors' (article 13.14)
- Amendment to the section 'The Council of Elders' (article 16.4)

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- Amendment to the section 'Common Seal, Authentication of Documents' (article 23.9)
- Further amendments to sections 5, 11 and 12 [articles 5.2, 11.4, 12.2(i), 12.11(i), 12.11(vi), 12.11(xi), and 12.13(ii)]

I would like to thank the community, our members and the Governance Committee for their contribution to this revision of the Bylaws or Constitution of AFRINIC.

Eddy Kayihura
Chief Executive Officer

- 19. PROCEEDINGS OF DIRECTORS
- 20. SECRETARY
- 21. INDEMNITY AND INSURANCE
- 22. WINDING-UP
- 23. COMMON SEAL, AUTHENTICATION OF DOCUMENTS

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- 2016 (see the difference with current version)
- 2012
- 2007

1) INTERPRETATION

1.1) In this Bylaws, the words or terms in the first column shall have the meaning assigned to them in the second column, as follows:

#	Word/Term	Meaning	Note
1	Act	The Companies Act 2001 of Mauritius, as amended from time to time.	
2	Annual General Members' Meeting (AGMM)	The annual meeting of the Members of the Company company required to be held under section 115 of the Companies Act 2001.	
3	Associate Member	Any person, corporate or otherwise, who has have manifested a substantial interest in the number resources management as well as in the mission of AFRINIC to become its member, and has signed an Associate Membership Agreement.	Amended at the 2020 AGMM

Commented [ESM1]: INTERNAL TO ISPA - In order to preserve the drafting style of the Bylaws, we have made certain amendments made to the rights of Resource members and Registered members. For context, under the Companies Act 2001, the Registered Members (effectively being the directors and the CEO) are the only persons who are deemed to be 'members' of the Company as per the Act.

Ideally, given that the intention was to extend all 'member' rights to both resource members and registered members, the resource members should have been members listed in the registered members of the Company.

By not doing so, there are certain decisions which are limited to Registered Members (as they are the only members listed in the Company's register of members filled with the registrar of companies). For example, all decisions relating to items listed in section 105 of the Act (e.g. adoption of constitution, liquidation etc) can only be approved by Registered Members regardless of what the Bylaws provide and such a provision cannot be derogated from.

Commented [ESM2]: A meeting as per s. 115 is a meeting of Registered Member (i.e. a meeting of members who are listed in the register of members of the company). However, nothing prevents the company from requesting other stakeholders (i.e. Associate Members and Resource Members) from joining/attending the meeting.

4	Auditors	The auditors appointed by the Board for the time being of the Company.	
5	Board	“Board” or “Board of directors” or “Directors”, in relation to this Company, means the directors of the Company <u>company</u> for the time being and where the number is not less than the required quorum acting together as a Board of directors.	Amended at the 2020 AGMM
6	Bylaws	This Constitution, as adopted and amended from time to time in accordance with the Act.	
7	Chief Executive Officer (CEO)	The highest-ranking employee of the Company who shall manage the day-to-day affairs of the Company and who shall report to the Board.	
8	Company	African Network Information Centre (AfrinIC) Ltd, a company <u>private domestic company, limited by guarantee, and</u> incorporated in the Republic of Mauritius.	Amended at the 2020 AGMM
9	Community Meeting	Community Meetings shall include the Public Policy Meetings and the Annual General Members’ Meeting provided for in terms of Section 115 of the Act or any special meeting of the members.	
10	Community Resolution	<u>A resolution on a matter specified in Article 7.6 (other than Articles 7.6.5, 7.6.6 and 7.6.9), approved by a simple majority of the votes of those Registered Members and Resource Members entitled to vote and voting on the matter at an Annual General Members’ Meeting or Special General Members’ Meeting, in each case acting jointly.</u>	
11	Constitution	This constitution, also referred to as the Bylaws, as adopted and amended from time to time in accordance with the Act.	
12	Council of Elders	A non-executive and ad hoc Committee appointed by the Board, comprising of past chairpersons of AFRINIC who are no longer serving on the Board.	
13	Director	A <u>natural</u> person elected to the office of director at an Annual <u>Annual General</u> Members’ Meeting <u>in accordance with Article 13,</u> and the Chief Executive Officer in an ex-officio capacity, <u>as the context</u>	

Commented [ESM3]: Amended for accuracy.

Commented [ESM4]: Undefined term, we advise including a definition for same.

Commented [ESM5]: Introduced a “Community Resolution” to replace Ordinary Resolutions which creates a contractual voting mechanism for Resource Members that is supplementary to statutory resolutions, resolving the conflation between statutory and contractual voting rights. Please see the comment hereunder for “Registered Member”.

		indicates.	
14 13	Election Committee	A committee set up under Article 10 of this Constitution, comprising of such staff of AFRINIC, designated by the Chief Executive Officer.	
15 14	End-Site	Any entity, corporate or individual that receive services (Number Resources assignments) directly from AFRINIC for exclusive use on its own service infrastructure.	
16 15	E-voting	An election system that allows a voter to record his or her secure and secret ballot electronically from any location.	
17 16	Internet	The co-operative worldwide electronic network of computers and computer networks using TCP/IP protocol and includes further cooperative worldwide electronic networks that incorporate, replace and/or develop out of that network using any technology.	
18 17	Internet Community	Any person or corporate body living or operating in the AFRINIC service region and interested in the Internet Number Resource Management.	
19 18	Local Internet Registry (LIR)	Any Network Operator that provides Internet services to distinct end-users and end-sites.	
20 19	Member	Registered Member, Resource Member and Associate Member.	
21 20	Nomination Committee (NomCom)	A committee of volunteers from the community appointed by the Board and consisting of at the most three persons who have displayed substantial interest in Number Resources Management and in AFRINIC's mission generally plus one representative of the Board from a non-open seat.	

21	Ordinary Resolution	A resolution that is approved by a simple majority of the votes of those members entitled to vote and voting on the matter which is the subject of the resolution.	
22	Person	Any individual, company, body corporate, registered organisation, unincorporated association, governmental organisation and intergovernmental organisations or non-governmental organisation.	
23	Policy Development Process (PDP)	A bottom-up, open and transparent process, approved by the Internet Community wherein all stakeholders may participate in the creation of policies that would ensure that the Internet Number Resources are distributed and managed in a responsible and fair manner.	
24	Registered Member	Any Director upon assumption of office and who is a member within the meaning of the Act, <u>whose name shall be entered in the register of members of the Company maintained pursuant to section 91 of the Act.</u>	
25	Registration Service Agreement (RSA)	A legally binding agreement between AFRINIC and such legal entities which use or shall use Internet Number Resources managed and administered by AFRINIC.	
26	Resource Member	A legal entity or person that meets the requirements for Internet number resources allocations and/or assignment and who signs the Registration Service Agreement.	
27	<u>Special General Members' Meeting (SGMM)</u>	<u>A special meeting of the Registered Members and Resource Members called in accordance with Article 11.6, being a meeting other than the Annual General Members' Meeting.</u>	
27 8	Special Resolution	A resolution approved by a majority of 75 per cent of the votes of those members <u>Registered Members</u> entitled to vote and voting on the question.	

Commented [ESM6]: The current definition does not expressly require entry in the register of members. Under s.99 and s.269(2) of the Act (as read with the definition of "members" in the Act), only persons whose names appear on the register of members have statutory member rights. Only Registered Members on the register have statutory rights equivalent to shareholders.

Commented [ESM7]: Missing definition added for undefined term.

Commented [ESM8]: Please see comments above. In accordance with s.105 as read with s.269(2) of the Act, only persons on the register of members can pass statutory special resolutions.

1.2-) Words not defined herein shall, in so far as the context permits have the same meaning as in the Act.

1.3) For the avoidance of doubt and subject to the other provisions of this

Constitution:

(a) Where this Constitution or the Act requires a Special Resolution, such resolution shall be passed exclusively by the Registered Members, who are the only members of the Company within the meaning of the Act, and whose names are entered in the register of members maintained pursuant to section 91 of the Act.

(b) Where this Constitution requires a Community Resolution, such resolution is a contractual requirement imposed by this Constitution. A Community Resolution does not replace, derogate from, or modify any statutory resolution requirements under the Act.

(c) The rights of Resource Members and Associate Members under this Constitution are contractual rights arising from the Registration Service Agreement or Associate Membership Agreement (as applicable). Resource Members and Associate Members are not members of the Company within the meaning of the Act and do not have statutory member rights under the Act.

Commented [ESM9]: Establishes overarching principles for distinguishing statutory member rights from contractual Resource Member/Associate Members rights.

Commented [ESM10]: Ensures the contractual voting layer cannot be used to argue that statutory resolution requirements have been modified or waived.

2) NAME

2.1) The name of the Company shall be "African Network Information Centre (AfrinIC) Ltd", and the Company's business will be conducted under the name "AFRINIC". **[Amended at the 2020 AGMM]**

2.2) An application to change the name of the Company shall be made by the Board ~~by following the~~ passing of a ~~S~~pecial ~~R~~esolution to that effect and filing a copy thereof with the Registrar of Companies.

3) TYPE AND OBJECTS OF COMPANY

3.1) The Company shall be a private domestic company limited by guarantee.

3.2) The income and the capital of the Company shall be applied solely towards the promotion of the objects of the Company, and no part of the income or capital shall be paid or transferred, directly or indirectly, to the members, whether by way of dividend, capital distribution or bonus or otherwise.

3.3) Article 3.2 shall be without prejudice to the power of the Company to effect the payment of:

1. ~~r~~Reasonable and proper remuneration to any officer, employee or member of the Company in return for any services provided to the Company; and
2. ~~e~~Expenses of Directors arising directly out of their tenure of office and approved by the Board.

3.4) The Company shall have, both within and outside the Republic of Mauritius, full capacity to carry and/or undertake any business or activity, including but not limited to the following objects:

1. to provide the service of allocating and registering Internet resources for the purposes of enabling communications via open system network protocols and to assist in the development and growth of the Internet in the African region;
2. to promote the representation of AFRINIC membership and the Internet community of the African region by ensuring open and transparent communication and consensus-driven decision-making processes;
3. to promote responsible management of Internet resources throughout the African region, as well as the responsible development and operation of Internet infrastructures;
4. to provide educational opportunities to the public so as to increase understanding within African communities of Internet technical and policy issues;
5. to propose and take such steps as are necessary to promote the development of public policies in the best interest of members and to seek legislative and regulatory consideration, whether by way of meetings or representations, of issues of general benefit to the members, where and when appropriate; ~~(vi)~~
- ~~5-6.~~ _____ to develop and promote technical and business practise standards related to Internet service provision to members;
- ~~6-7.~~ _____ to disseminate among its member's information on all matters affecting the Company and its members and to provide for and be a central channel of communication for the members of the Company and generally for the furtherance and promotion of their interests;
- ~~7-8.~~ _____ to cultivate and obtain reciprocal relations with kindred institutions; and
- ~~8-9.~~ _____ to do all other things incidental or conducive to the attainment of all or any of the objects of the Company.

4) FUNDING

4.1) Funding for the running of the Company shall be realised from the following:

1. membership fees from members;
2. setup fees for bulk registration services;
3. setup fees for individual address space assignments;
4. maintenance fees for non-contiguous, non-ISP address space;
5. registration fees for individual address space transfers;
6. setup fees for autonomous system number ("ASN") assignments;
7. grants and/or voluntary donations; and
8. such other sources as may be deemed appropriate from time to time by the Board.

4.2) Review of fees:

1. The fees mentioned in Article 4.1 above shall be subject to review from time to time by the Board.
2. Before finalising any changes in fees, the Board shall consult the Members and the community, and allow at least 60 days for comments.
3. After the Board finalises any changes in fees, the new fees shall take effect after a notification period, to Member and the community, of not less than 60 days.

5) REGISTERED OFFICE

- 5.1) The registered office shall be on the 11th Floor, Standard Chartered Tower, Cybercity, Ebène, Mauritius. **[Amended at the 2020 AGMM]**
- 5.2) The Board may at any time change the registered office of the Company upon the fulfilment of the formalities prescribed in the Act. **[Amended at the 2020 AGMM]**

6) MEMBERSHIP

- 6.1) Subject to the other provisions of this Article, membership shall be open to:
1. any Person who is geographically based within, and providing services in the African region, and who is engaged in the use of, or business of providing, open system protocol network services; or
 2. any other Person who is approved by the Board or the Registered Mmembers.
- [Amended at the 2020 AGMM]**

- 6.2) Members shall be Registered Members, Resource Members or Associate Members.

- 6.3) Registered Member - An individual who shall be elected as Director in accordance with Article 13 below shall become a Registered Member upon assumption of office. The Chief Executive Officer shall automatically also be appointed as a Registered Member, provided that the said individual. Each Registered Member shall sign such forms as may be prescribed by the laws of Mauritius and undertake to contribute Rs. 500 (five hundred Mauritian rupees only) in the event of the Company being wound up according to Article 22. The Board shall ensure that the name of each Registered Member is entered in the register of members of the Company maintained pursuant to section 91 of the Act upon assumption of office.

Resource Member - A legal entity (local Internet registry or end-site) shall be deemed to be a Resource Member of AFRINIC after it has completed the following formalities cumulatively:

1. justified its need for the right to use Internet Number Resources to AFRINIC;
2. signed AFRINIC's Registration Service Agreement; and
3. paid the relevant setup and membership fees related to Internet Number Resources

Commented [ESM11]: Afrinic to confirm if this was the intention. Allowing any member i.e. Associate/resource member to approve membership can be problematic.

In our opinion, approval of membership should be a board decision.

Commented [ESM12]: The current provision is ambiguous as to when Registered Member status accrues. This amendment clarifies the trigger (assumption of office) and explicitly sets out the obligation to make an entry in the register of members for such 'membership' to be effective. It is apposite to note that the company has 14 days from the date on which the entry is made to the register of member to make statutory filings with the registrar of companies.

allocated/assigned to it by AFRINIC Registration ~~Service.~~

Commented [ESM13]: We advise including a separate paragraph for Associate Member here. However, since we do not have visibility on the characteristics/requirements of such Associate Members, we are not able to propose appropriate wording here.

7) POWERS OF MEMBERS

7.1) Each Registered and Resource ~~M~~member shall be entitled to receive notice of all member meetings in accordance with Articles 12.4 and 12.11 below, as applicable, and to attend all such ~~m~~Meetings.

7.2) Subject to Articles 7.4 and 7.5 below, ~~Registered and Resource Member Members~~ shall be entitled:

Commented [ESM14]: Removed reference to "Members" as Associate Members are observers and cannot vote.

1. by ~~majority vote~~Community Resolution on the day of each Annual General Members' Meeting, to elect the Directors of the Company in accordance with Article 13.5 below; and
2. at each Annual General Members' Meeting, to discuss and comment on the general policies of the Company on such issues and for such a time as shall be reasonably allowed by the chairperson of the Annual General Members' Meeting. **[Amended at the 2020 AGMM]**

Commented [ESM15]: Please see definition of Community Resolution.

7.3) For the avoidance of doubt, Article 7.2 shall be without prejudice to any contractual rights of Resource Members in any agreement with the Company.

7.4) Associate Members shall be entitled to receive notice of all Annual General Members' Meetings in accordance with Article 12.2 and to attend all such ~~m~~Meetings as ~~observer.~~Observer.

7.5) Associate Members shall have the right

1. to receive notice for members' meeting called by AFRINIC;
2. to attend as ~~observer~~Observer all members' meetings called by AFRINIC;
3. to take advantage of services provided by AFRINIC as regards training, consultancy and technical expertise; and
4. to attend any meetings convened by AFRINIC if the Associate member(s) is so qualified.

7.6) The Registered Members and Resource Members shall, at Annual General Members' Meetings or by way of written resolutions in accordance with Article 11.7, in addition to the rights conferred by Articles 7.1 and 7.2, have the right to:

1. consider and adopt by ~~Ordinary-Community~~ Resolution the financial statements of the ~~Company~~;
2. receive any auditor's report;
3. consider the annual report;
4. determine, by ~~Ordinary-Community~~ Resolution, the general policies for fulfilling the objects of the Company;
5. approve, in accordance with ~~s~~Section 130 of the Act, a major transaction, provided that approval of a major transaction shall require a Special Resolution;

Commented [ESM16]: Permits contractual Resource Member participation.

Commented [ESM17]: Permits contractual Resource Member participation

Commented [ESM18]: Ensures statutory compliance under s.105(1)(c)/s.130 of the Act.

6. consider and approve ~~by Special Resolution, if appropriate,~~ proposals for the revocation, amendment or replacement of this Constitution, provided that approval of any such proposal shall require a Special Resolution;
7. appoint by ~~Ordinary Community~~ Resolution at each Annual General Members' Meeting the auditor of the Company to hold office until the conclusion of the next Annual General Members' Meeting;
8. request the Board, by way of a written notice signed by Registered Members holding together not less than five (5) per cent of the voting rights entitled to be exercised on the issue, ~~Registered Members and Resource Members,~~ to call a Special General Members' Meeting to vote on one or more resolutions; and
9. resolve, by Special Resolution, to put the Company into liquidation.

Commented [ESM19]: Ensures statutory compliance under ss.44(2)/105(1)(a) of the Act.

Commented [ESM20]: Permits contractual Resource Member participation.

Commented [ESM21]: Aligns with s.116(b) of the Act, which confers this statutory right only on members (i.e., persons on the members register). Resource Members are not members for the purposes of the Act and have no statutory requisition right.

~~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.~~

Commented [ESM22]: Registered Members alone have statutory right to amend Bylaws as per sub-article 6 above. This right cannot be extended to resource/associate members as matter set out under s.105 of the Act cannot be derogated from.

8) TERMINATION OF MEMBERSHIP

8.1) The membership of a Registered Member shall terminate upon:

1. the Registered Member absenting himself from two (2) consecutive Board meetings over a period of 12 months without showing good cause;
2. absenting himself from four (4) non-consecutive Board meetings over a period of 12 months without showing good cause;
3. the Board, acting reasonably and in good faith, determining by two-thirds (2/3)~~2/3~~ affirmative vote of its members that the Registered Member has refused or failed to comply with the provisions of this Constitution or any applicable rule made by the Board;
4. his ceasing to be a Director pursuant to Articles 13.1 and 13.10 below.

8.2) The membership of a Resource Member shall terminate upon:

1. the Resource Member, if not an individual, ceasing to exist pursuant to the laws of its country of incorporation or, being an individual, upon his death;
2. the Board, acting reasonably and in good faith, determining that the Resource Member has ceased to satisfy criteria for admission to membership of the Company or ceased to comply with Number Resources Management Policies;
3. the Board, acting reasonably and in good faith, determining that the Resource Member has refused or failed to comply with the provisions of this Constitution or any applicable rule made by the Board;
4. membership fees or any other sum payable by the Resource Member to the Company remaining unpaid for a period of three (3) months after the due date of payment (subject to the Board deciding otherwise); or
5. such other event or such other grounds as the Board, acting reasonably and in good faith, shall determine from time to time.

8.3) The membership of an Associate Member shall terminate upon:

1. the Associate Member, if not an individual, ceasing to exist pursuant to the laws of its country of incorporation or, being an individual, upon his death;
2. notice to this effect is given to the Board by the Member;
3. the Board, acting reasonably and in good faith, determining that the Associate Member has ceased to satisfy criteria for admission to Associate membership of the Company;
4. the Board, acting reasonably and in good faith, determining that the Associate Member has refused or failed to comply with the provisions of this Constitution or any applicable rule made by the Board;
5. membership fees or any other sum payable by the Associate Member to the Company remaining unpaid for a period of three (3) months after the due date of payment (subject to the Board deciding otherwise); or
6. such other event or such other grounds as the Board, acting reasonably and in good faith, shall determine from time to time

8.4) Termination shall not relieve a member from any obligation to pay any fees payable to the Company on or before the date of termination and shall not entitle the Resource and Associate Member to any refund of any fees, whether in whole or in part.

8.5) The Resource Member shall, on termination of its membership, return the resources allocated to it by the Company.

9) THE NOMINATION COMMITTEE

There shall be a Nomination Committee (NomCom), which shall consist of a chairman and three other members as appointed by the Board and composed of qualified and experienced persons. The Board shall make a public call for voluntary nomination from the African Internet Community.

9.1) No person shall be qualified for appointment to the NomCom if he/she is a candidate for election to the Board or is domiciled in a region whose seat is open for renewal during an election.

9.1-A) No member of the Nomcom shall be eligible to stand as a candidate for any election in respect of which the NomCom is required to find suitable candidates for such election held by the Company. **[Inserted at the 2020 AGMM]**

9.2) The NomCom shall report to the Board and operate under such guidelines as may be prescribed by the Board.

9.3) Functions of the Nomination Committee:

1. The NomCom shall:
 - (i) use its best effort towards ensuring that a satisfactory number of individuals from the African Internet community stand as a candidate for the election of the directors of AFRINIC; and

(ii) have general responsibility for, and shall supervise the conduct of the polls by the Election Committee on election day.

2. In the discharge of its function under Article 9.3.1(i) above, the NomCom:

- (i) shall call for candidates for elections held by AFRINIC;
- (ii) prescribe criteria and qualifications for eligibility to stand as a candidate for elections held by AFRINIC;
- (iii) may ~~it~~ review candidates prior to finalising the list of candidature; and
- (iv) ~~s~~ shall finalise the list of candidates for any election held by AFRINIC.

10) ELECTION COMMITTEE

There shall be an ~~E~~lection ~~C~~ommittee comprising of such staff members of AFRINIC as may be designated by the Chief Executive Officer.

10.1) The Election Committee shall have the following functions:

- 1. have general responsibility for, and shall handle all the preelection process for all elections held by AFRINIC;
- 2. have such functions relating to these elections as may be assigned to it by the Chief Executive Officer; ~~and~~
- 3. liaise with the ~~c~~Chairperson of the Nomination Committee, set up under Article 9-~~of the Constitution~~, for the holding of polls on election day.

10.2) For the removal of doubt, where during the holding of an AFRINIC election, any issue is raised, which is not expressly provided for in this Constitution ~~or the existing election guidelines and processes~~, the ~~Resource #~~Members present shall collectively and by consensus resolve it. ~~Where no consensus has been reached with 5 business days of such issue arising, the Council of Elders shall have the discretion to resolve such issues in consultation with the Election Committee.~~ Such resolution shall for the future AFRINIC elections be applied as a precedent and become an integral part of the election guidelines.

Commented [ESM23]: Solution to these issues may also be set out in existing election processes/guidelines.

Commented [ESM24]: Given that registered members are board members who would be 'conflicted' during elections we propose that resolution of issues are directed to Resource Members instead. However, as is, there can be failure to reach a collective consensus and we advise that the council of elders resolve such deadlock.

11) COMMUNITY MEETINGS

Community Meetings shall include the Public Policy Meetings and the Annual General Members' Meeting provided for in terms of Section 115 of the Act or any ~~S~~pecial ~~General Members' Meeting~~.~~meeting of the members.~~

11.1) The Board shall call an Annual General Members' Meeting in terms of Section 115 of the Act:

1. not more than once in each year;
2. not later than six (6) months after the balance sheet date of the Company; and
3. not later than fifteen (15) months after the previous Annual General Members' Meeting.

11.2) The Board shall call a Public Policy Meeting at least once a year as per requirements defined in the Policy Development Process. Public Policy Meeting may be attended by:

1. Members (Registered, Resources and Associate);
2. anyone interested in the Number Resources Management policy.

11.3) For the purpose of subsection 11.2, a Public Policy Meeting means a meeting open to the community wherein proposals for policies for a proper and responsible usage and Management of Internet number resources are discussed and agreed within the framework of the Policy Development Process (PDP) defined by the Regional Internet community and ratified by the Board.

11.4) Notwithstanding the provisions of Article 11.3 above, the Board may adopt such policies regarding the management of internet number resources where it considers that the same is necessary and urgent, having regard to the proper and responsible usage of these resources. **[Amended at the 2020 AGMM]**

11.5) Endorsement of the policy adopted by the Board:

1. 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.
2. 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 action taken in terms of the policy prior to such non-endorsement shall remain valid.

11.6) A Special General Members' Meeting:

1. may be called at any time by the Board;
2. shall be called by the Board on the written request of Members in accordance with Article 7.6.8(viii) above.

11.7) A resolution in writing approved by not less than 75 per cent of Members entitled to vote on such a resolution is as valid as if it had been passed at an Annual General Members' Meeting.

12) PROCEEDINGS AT ANNUAL GENERAL MEMBERS' MEETINGS

12.1) Chairperson:

1. Where the Directors have elected a chairperson of the Board, and the ~~c~~Chairperson of the Board is present at an Annual General Members' Meeting called in terms of Article 11.1, he/she shall chair the Annual General Members' Meeting.
2. If at any Annual General Members' Meeting called in terms of Article 11.1, the ~~c~~Chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the Annual General Members' Meeting, the ~~v~~Vice-~~c~~Chairperson will chair the meeting.
3. Where no ~~c~~Chairperson of the Board has been elected or if, at any Annual General Members' Meeting called in terms of Article 11.1, the chairperson and the ~~v~~Vice-~~c~~Chairperson of the Board are not present within 15 minutes of the time appointed for the commencement of the Annual General Members' Meeting, the Directors present shall elect one of their members to be the ~~c~~Chairperson of the Annual General Members' Meeting.
4. The ruling of the ~~c~~Chairperson of the Annual General Members' Meeting called under Article 11.1 on matters relating to the order of business and the procedure and conduct of the Annual General Members' Meeting shall, subject to this Constitution, be final and binding and no motion of dissent from the ruling of the ~~c~~Chairperson may be entertained.

12.2) Notice of Annual General Members' Meetings

1. Written notice of the time, date and place of an Annual General Members' Meeting called under Article 11.1, shall be sent to every Member and to every Director, the secretary and the auditor of the Company not less than ~~214~~ days before the Annual General Members' Meeting. The notice may be delivered by post, fax, electronic mail or such other method as the Board shall reasonably determine from time to time; **[Amended at the 2020 AGMM]**
2. The notice to be sent pursuant to Article 11 shall state:
 1. the names of the Directors who will retire on the date of that Annual General Members' Meeting and the region represented by each such Director;
 2. the names of the persons who have been proposed to be elected as Directors and the region which is proposed to be represented by each such Person;
 3. any policy issues which the Board considers should be discussed at the Annual General Members' Meeting;
 4. the nature of the business to be transacted at the Annual General Members' Meeting in sufficient detail to enable a Member to form a reasoned judgment in relation to it; and
 5. ~~the~~ text of any Special Resolution and/or Community Resolution to be submitted to the Annual General Members' Meeting.

Commented [ESM25]: Compliance with paragraph 2(a) of the Fifth Schedule to the Act.

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Commented [ESM26]: Paragraph 2(c) of the Fifth Schedule to the Act is mandatory. The statutory waiver operates only when all Registered Members attend without protest or agree.

12.3) Any irregularity in a notice of an Annual General Members' Meeting shall be waived where all the ~~Registered Members~~ members entitled to attend and vote at the

Annual General Members' Meeting attend the said ~~m~~Meeting without protest as to the irregularity, or where all ~~Registered Members~~members agree to the waiver. For the avoidance of doubt, the attendance of, or waiver by, Resource Members or Associate Members shall not be relevant for the purposes of determining whether an irregularity is waived under paragraph 2(c) of the Fifth Schedule to the Act.

12.4) Any accidental omission to give notice of an Annual General Members' Meeting called under Article 11.1 to, or the failure to receive notice of an Annual General Members' Meeting called under Article 11.1 by a Member or any other Person entitled to receive notice shall not invalidate the proceedings at that ~~m~~Meeting.

12.5) The chairperson may, or where directed by the Annual General Members' Meeting, adjourn the ~~m~~Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Annual General Members' Meeting called under Article 11.1 other than the business left unfinished at the Annual General Members' Meeting from which the adjournment took place.

12.6) When an Annual General Members' Meeting is adjourned for 30 days or more, a notice of the adjourned ~~General-m~~Meeting shall be given as in the case of an original ~~m~~Meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or the business to be transacted at the adjourned Annual General Members' Meeting to Associate ~~M~~members.

12.7) Consistent with Articles 7.4 and 7.5 above, an Associate Member shall have the right to attend the Company's Annual General Members' Meeting in observer capacity only. **[Amended at the 2020 AGMM]**

12.8) Methods of holding Annual General Members' Meetings (called under Article 11.1 of the present Constitution):

1. An Annual General Members' Meeting called under Article 11.1 may be held either
 1. by the members, including a number of ~~Registered M~~members who constitute a quorum, being assembled together at the place, date, and time appointed for the ~~m~~Meeting; or
 2. by means of audio, or audio and visual, communication by which all ~~Resource M~~members participating and constituting a quorum can simultaneously hear each other throughout the ~~m~~Meeting.

12.9) Votes to be exercised on the date of the Annual General Members' Meeting with respect to the election of Directors may be exercised ~~i~~n person, by proxy, by e-voting or by such other method of communication as may be decided from time to time by the Board.

12.10) Quorum

1. Where a quorum is not present, no business shall be transacted at an Annual General Members' Meeting called under Article 11.1 of this Constitution.

2. The quorum for an Annual General ~~Members' Meeting~~ ~~Member meeting~~ shall be composed of a minimum of ten (10) members entitled to vote and present in person or by proxy comprising:
1. Four (4) Registered Members being Directors elected to represent a region;
 2. One (1) Registered Member being a Director elected on a non-regional criterion; and
 3. Five (5) Resource Members.
3. Where a quorum is not present within 30 minutes after the time appointed for the Annual General Members' Meeting:
1. in the case of an Annual General Members' Meeting called under section 118(1) (b) of the Act, the Meeting shall be disbanded;
 2. in the case of an Annual General Members' Meeting called under Article 11.1 of this Constitution, the Meeting shall be adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint; and
 3. ~~and~~ at the adjourned Annual General Members' Meeting, the quorum shall be ten (10) members entitled to vote and present, subject to Article 12.10.2(ii) in person or by proxy.

Commented [ESM27]: Aligns with Fifth Schedule para 4(b) of the Act.

Commented [ESM28]: While there is no legal requirement to have a lower threshold, the concept of adjourned meeting was to enable the meeting to go through with a lower threshold or the number of members present.

We advise that either this threshold is lowered or the members present (regardless of the number) constitute quorum to avoid 'incapacitating' the company

Commented [ESM29]: Incorrect cross referencing.

Commented [ESM30]: The provisions of paragraph 5(a) of the Fifth Schedule of the Act cannot be derogated (see paragraph 5(i) of the Fifth Schedule). As such, these two alternative mechanisms are not valid.

Commented [ESM31]: Same as above, paragraph 5(d) of the Fifth Schedule cannot be derogated from.

12.11) Voting

1. Where an Annual General Members' Meeting is held under Article 12.814.6 (i) above unless a poll is demanded, voting at the meeting shall be by whichever of the following methods as determined by the chairperson of the ~~m~~Meeting:
 1. voting by voice;
 2. voting by show of hands;
 - ~~voting by paper ballot;~~
 - ~~voting by the electronic system (e-voting)~~ **[Amended at the 2020 AGMM]**
2. Where an Annual General Members' Meeting is held under Article ~~41.6~~ 12.8 above unless a poll is demanded, voting at the Meeting shall be by the members signifying individually their assent or dissent by voice.
3. A declaration by the chairperson of the Meeting that a resolution is carried by the requisite majority shall be conclusive evidence of that fact unless a poll is demanded.
4. At an Annual General Members' Meeting called under Article 124.84, a poll may be demanded by (i) at least 5 members having the right to vote at the meeting, (ii) members representing at least 10% of members having voting rights at the meeting ~~any Registered Member or any Resource Member~~ or (iii) the chairperson of the Meeting.
5. A poll may be demanded either before or after the vote is taken on a resolution.
6. Where a poll is taken, each member shall have one vote on a resolution on which that Member is entitled to vote. **[Amended at the 2020 AGMM]**
7. The chairperson of an Annual General Members' Meeting called under Article 11.1 shall be entitled to a casting vote.
8. The instrument appointing a proxy to vote at an Annual General Members' Meeting

called under Article 11.1 of this Constitution shall confer authority to demand or join in demanding a poll and a demand by a Person as a proxy for a Registered Member or Resource Member shall have the same effect as a demand by the Registered Member or Resource Member.

- 9. The demand for a poll may be withdrawn.
- 10. Where a poll is duly demanded, it shall, subject to Article ~~124.17~~ above, be taken in such manner as the chairperson directs and the result of the poll shall be deemed to be the resolution of the General Meeting at which the poll is demanded.
- 11. A poll demanded on the election of a chairperson or on a question of adjournment, shall be taken immediately, on any other question, shall be taken at such time and place as the meeting directs and any business other than that on which a poll is demanded may be proceeded with pending the taking of the poll.
- 12. A Registered Member or a Resource Member may exercise his right to vote at a General Meeting by casting a postal vote in accordance with the Fifth Schedule to the Act. **[Amended at the 2020 AGMM]**

12.12) Proxies

- 1. A Member entitled to vote at the Company's Annual General Members' Meeting may exercise the right to vote either ~~by e-voting,~~ by being present in person or by proxy; **[Amended at the 2020 AGMM]**
- 2. A proxy for a Member may attend and be heard at an Annual General Members' Meeting as if the proxy were the Member;
- 3. A proxy shall be appointed by a notice in writing signed by the Member and the notice shall state whether the appointment is for a particular Annual General Members' Meeting or a specified term;
- 4. No proxy shall be effective in relation to an Annual General Members' Meeting called under Article 11.1 of this Constitution unless a copy of the notice of appointment is produced before the start of the Meeting. Any power of attorney or other authority under which the proxy is signed or a notarially certified copy shall also be produced;
- 5. A proxy form shall be sent with each notice sent to a Member;
- 6. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing or in the case of a corporation under the hand of an officer or of an agent duly authorised ~~or in the event of the introduction of the e-voting system, such electronically generated proxy document approved by the Board;~~
- 7. The instrument of appointing a proxy shall be in such form as may be determined by the Board from time to time or, in default of such determination, in the following form;

I/we of being
 members of the above
 named company hereby appoint
 or failing
 him/her, of
 as my/our proxy
 to vote for me/us at the meeting of the company to be
 held on
 and at any adjournment of the meeting.
 Signed this day of

Commented [ESM32]: The mandatory provisions of the fifth schedule do not allow for this derogation.

Commented [ESM33]: Same as above, derogation not permitted.

8. No member entitled to vote during an election held by the Company shall carry

more than five (5) proxies during the said election; and

9. No Candidate to the election of Director of the Company shall act as a proxy for any member during such an election.

~~10.~~

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12.13) Minutes

1. The Board shall ensure that minutes are kept for all proceedings at all Annual General Members' Meetings.
2. Minutes that have been approved by the chairperson of the Annual General Members' Meeting and verified by the Board are prima facie evidence of the proceedings.
3. Minutes of Annual General Members' meeting, as well as Board meetings, shall be kept in such accessible electronic formats as the members may decide, subject to such reasonable restrictions which the Company may impose with the approval of the members' meeting. **[Amended at the 2020 AGMM]**

12.14) Member proposals

1. Each Member may nominate one individual who shall be eligible to be elected as a Director. Such nominations must be received by the Nomination Committee not less than three (3) weeks and not more than eight (8) weeks prior to an Annual General Members' Meeting called under Article 11.1 of this Constitution at which Directors will be elected. Such nominations shall, subject to the Election Guidelines-~~document~~, be approved by the Board, and, inter alia, contain the full name and address of the nominated person as well as a short description of the person, including the person's professional background, age, nationality, residential address and the region, which the person is proposed to represent.
2. A Member may give written notice to the Board of a matter which the Member proposes to raise for discussion or resolution at the next Annual General Members' Meeting called under Article 11.1 of this Constitution at which the Member is entitled to vote.
3. Where the notice is received by the Board not less than 28 days before the last day on which notice of the relevant Annual General Members' Meeting is required to be given by the Board, the Board shall, at the expense of the Company, give notice of the Member's proposal and the text of any proposed resolution to all members entitled to receive notice of the Meeting.
4. Where the notice is received by the Board not less than seven (7) days and not more than 28 days before the last day on which notice of the relevant Annual General Members' Meeting is required to be given by the Board, the Board shall, at the expense of the ~~MemberCompany~~, give notice of the Member's proposal and the text of any proposed resolution to all ~~Membersmembers~~ entitled to receive notice of the said Meeting.
5. Where the notice is received by the Board less than 7 days before the last day on which notice of the relevant Annual General Members' Meeting is required to be given by the Board, the Board may, where practicable, and at the expense of the

Commented [ESM34]: Same as above, derogation not permitted.

Member, give notice of the Member's proposal and the text of any proposed resolution to all members entitled to receive notice of the said Meeting.

6. Where the Directors intend that members may vote on the proposal by proxy, they shall give the proposing Member the right to include in or with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Member in support of the proposal, together with the name and address of the proposing Member.
7. The Board shall not be required to include in or with the notice given by the Board a statement prepared by a Member which the Directors consider to be defamatory, frivolous, or vexatious.
8. Where the costs of giving notice of the Member's proposal and the text of any proposed resolution are required to be met by the proposing Member, the proposing Member shall, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.
9. Notwithstanding the other provisions of this Article, where a proposal is made by a Resource Member, the Board shall have discretion as to whether notice of such proposal should be given to Mmembers. Corporations may act by representative. A corporate body, which is a Member, may appoint a representative to attend an Annual General Members' Meeting on its behalf in the same manner as that in which it could appoint a proxy.

12.15) Other proceedings

1. Unless otherwise expressly provided in this Constitution or otherwise mandatory as per the provisions of the Act, an Annual General Members' Meeting called under Article 11.1 of this Constitution may regulate its own procedure.

13) APPOINTMENT OF DIRECTORS

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

1. the expiry of the term of office of any Director;
2. ~~T~~he removal or resignation of any Director in terms of Article 14 of this Constitution;
3. ~~T~~he disqualification of any Director in terms of Article 13.10 of this Constitution;
4. the untimely death of any Director; or
5. the filing of a casual vacancy in terms of Article 13.14.

13.2) The election of the Directors of the Company~~company~~ shall be carried out in line with the e~~E~~lection process approved by the Board.

13.3) Written notice of the time, date and place of the meeting of Mmembers shall be sent to every Mmember and to every Director, the secretary and the auditor of the Company not less than 2144 days before the meeting. The notice may be delivered by post, fax, electronic mail or such other method as the Board shall reasonably determine from time to time.

Commented [ESM35]: Compliance with paragraph 2(a) of the Fifth Schedule to the Act.

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

1. 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);
2. 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 on their competencies and not their regional representation (Seats 7 and 8); and
3. The Chief Executive Officer (Seat 9).

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

1. Northern Africa (seat 1);
2. Western Africa (seat 2);
3. Indian Ocean (seat 3);
4. Central Africa (seat 4);
5. Southern Africa (seat 5); and
6. Eastern Africa (seat 6).

Each Director elected under Articles 13.4.1-(i) and 13.4.2-(ii) of this Constitution shall hold office for a term of three years, ~~which, A Director's~~ 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 ~~e~~Elected Director, or, if no such Annual General Members' Meeting is held by that date, on that third anniversary date itself. Subject to Article 13.6, such Director shall be eligible for re-election on the expiry of his term of office.

13.6) For the avoidance of doubt, the sequential election of Directors elected under Article 13.4.1-(i) of this Constitution, prevailing at the date of adoption of this Constitution shall be continued so that, on the expiry of the respective terms of office of Directors, they shall be elected in the following sequence:

1. The election for Directors representing Northern Africa and Western Africa;
2. The election for Directors representing the Indian Ocean and Central Africa; and
3. The election for Directors representing Southern Africa and Eastern Africa.

13.7) Election mechanism

Commented [ESM36]: Clarification proposed to avoid any misinterpretation/confusion with quorum under 19.6.

Commented [ESM37]: Prevents holdover abuse where directors argue terms did not expire where an AGMM was not held.

1. Except for the Chief Executive Officer, and subject to Articles 13.10 and 13.11, all other Directors shall be elected by Resource and Registered Members by Community Resolution in accordance with Article 7.2.1 on the date of each Annual General Members' Meeting.

(i) Six directors representing each of the regions listed in Article 13.5 shall be elected according to Article 13.6.

(ii) Two Region-Independent Directors representing seats 7 (seven) and 8 (eight) shall be elected during the same elections as for Northern and Western (seats 2 and 1) and the Indian Ocean and Central (seats 3 and 4). ~~and shall hold office according to the terms of Article 13.10 of the Constitution.~~

2. The NomCom shall, in terms of the existing election process, take all the relevant actions for the participation of these nominees in the election of directors.

13.8) In the event that there is no eligible candidate for a particular region, 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 any seat.

13.9) Notwithstanding any other provision of this Constitution, the Company shall at all times have at least one Director who shall be ordinarily resident in Mauritius in line with the provisions of the Act.

13.10) No person shall be appointed or hold office as a Director if s/he is a person who:

1. is under 18 years of age;
2. is an undischarged bankrupt;
3. would, but for the repeal of Section 117 of the Companies Act 1984 of Mauritius, be prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act;
4. is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under Sections 337 or 338 of the Act;
5. is not a natural person; or
6. has been adjudged to have been of unsound mind.

13.11) A person shall not be appointed a Director of the Company unless:

1. that person has consented in writing to be a Director and certified that he/she is not disqualified from being appointed or holding office as a Director in accordance with the Act; and
2. that person has signed the forms required to be a Registered Member under Article 6.3 above.

13.12) Further to the provisions of Section 13.11, the NomCom shall, as far as practically possible, seek the following additional conditions for the eligibility of candidates to the position of Board Directors:

Commented [ESM38]: Ensures consistency between the election mechanism in Article 13.7 and the member voting rights in Article 7.2(1), and clarifies that Director elections require a Community Resolution.

1. previous Board or organisational leadership experience;
2. skills in business management and leadership;
3. fundraising for not-for-profit organisations experience;
4. network operations and Internet services experience; and
5. International business development experience.

13.13) The provisions of Section 137(1) of the Act shall not apply to the Company.

13.14) Notwithstanding the other provisions but subject to the provisions of ~~article~~ Article 13.10 of the ~~B~~ylaws, the Board shall, where it considers that it may not be reasonable to wait for the next Annual General Members' Meeting to fill a casual vacancy that has arisen pursuant to ~~article~~ Article 14.1.2, 14.1.3 or 14.1.4 (ii), (iii) or (iv) below, have power at any time and from time to time to appoint any person to be a Director to fill a casual vacancy in the Board. Any Director so appointed shall hold office only until the next following Annual General Members' Meeting at which Directors are elected and shall then be eligible for re-election. **[Amended at the 2020 AGMM]**

14) REMOVAL OF DIRECTORS

14.1) A Director shall hold office until:

1. his term of office expires, without prejudice to Article 13;
2. he/she signs a written notice of resignation and delivers it to the address for service on the Company, which notice shall be effective when it is received at that address or at such later time as may be specified in the notice;
3. he/she is removed by the affirmative vote of two-thirds of all other Directors;
4. he/she otherwise ceases to be a Director pursuant to Section 139 of the Act; or
5. the Director being the Chief Executive Officer, on the Board terminating his employment as Chief Executive Officer.

15) POWERS OF DIRECTORS

15.1) The business and affairs of the Company shall be managed under the direction and supervision of the Board.

15.2) Subject to such modifications, adaptations, exceptions or limitations which may be contained in the Act and this Constitution, the Board shall have all the powers necessary:

1. for directing, and
2. supervising the management of the business and affairs of the Company.

15.3) Without prejudice to the generality of Articles 15.1 and 15.2 above, the Directors shall be entitled to:

1. determine the guidelines for the allocation of address space to members in line with the member-driven Policy Development Process;

2. consider broad Internet policy issues in order to ensure that the policies and strategies of the Company fully respond to the changing Internet environment;
3. determine a financial budget for the activities of the Company for a given period;
4. establish a ceiling for expenditures for a given period and from time to time to vary such ceiling as they deem fit;
5. fill any casual vacancy in the office of the auditor of the Company;
6. provide any general directives to the Chief Executive Officer regarding Executive staffing of the Company;
7. determine through a dedicated committee, the conditions of employment of the employees of the Company who are employed at an Executive level;
8. reduce or waive fees payable by any person to the Company, or to amend in any manner whatsoever the conditions relating to the payment thereof;
9. to appoint or remove the secretary of the Company and to determine the remuneration payable to such secretary; and
10. to appoint such committees for such reasons and with such terms of reference as they shall consider necessary or desirable.

15.4) Subject to Section 15.1 ~~of~~, and the Seventh Schedule of the Act, the Directors may delegate their powers to such persons as they shall consider necessary and/or desirable for a given period of time.

15.5) Conflict of Interest

1. A Director of the ~~C~~company shall, where he/she has a potential or actual conflict of interest in any matter brought before the Board, ~~forthwith~~ disclose such potential or actual conflict to the Board ~~in accordance with section 148 of the Act. Such disclosure shall be entered in the minutes of the Board meeting and the interests register.~~
2. The said Director shall recuse himself/herself from voting on any such matter before the Board where such a conflict exists or may exist.
3. 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.

Commented [ESM39]: Proposed wording to ensure conformity with the provisions of section 148.

15.6) No person may hold more than one of the following positions within the ~~Company: company:~~

1. Chairperson of the Board.
2. Vice-Chairperson of the Board.
- ~~3.~~ Chief Executive Officer.
- ~~3-4.~~ Chief Financial Officer.

16) THE COUNCIL OF ELDERS

There shall be a Council of Elders appointed by the Board comprising a maximum of six (6) former chairpersons of AFRINIC who have left the Board. Their advisory role is commensurate with their experience leading the organisation as former ~~chairs~~.

16.1) Membership to the Council shall be opened to such former chairpersons who served at least one full term in that capacity.

16.2) First in first out principle will be used to ensure that the number of members of the council does not exceed six (6).

16.3) On the completion of their tenure of office, members of this Council shall retire and not be eligible for re-appointment.

16.4) This Council shall have an advisory role, consistent with such terms of reference as may be mutually agreed with the Board from time to time, and shall provide help and assistance to the cChair or the entire Board. **[Amended at the 2020 AGMM]**

17) CHIEF EXECUTIVE OFFICER

17.1) The Directors shall, by majority vote, appoint the Chief Executive Officer on such terms and conditions as they shall determine.

17.2) The Chief Executive Officer may, subject to applicable labour laws, be removed by an affirmative vote of two-thirds (2/3) of all other Directors.

17.3) The nationals of the country hosting the headquarters of AFRINIC shall be ineligible for appointment to the office of Chief Executive Officer, unless the Board determines by a resolution passed by two-thirds (2/3) of all Directors that no suitable candidate from another nationality is available and that the appointment is in the best interests of the Company.

17.4) The Chief Executive Officer:

1. shall manage the day to day business of the Company;
2. shall have the power to determine the remuneration and other conditions of employment of all employees of the Company (except for employees at the executive level);
3. shall have such other powers as may be delegated to him from time to time by the Board; and
4. shall report directly to the Board.

17.5) Notwithstanding Article 17.1 and Article 19.6 (including the provisions relating to an adjourned meeting thereunder), where the number of Directors in office is less than five (5) and the Board is unable to appoint a Chief Executive Officer due to a lack of quorum, the quorum for a meeting of the Board to be convened for the purpose of appointing an Acting Chief Executive Officer under this Article 17.5 shall be all the Directors then in office. Any person so appointed shall:

1. hold office until such time as the Board, having restored quorum, appoints a Chief Executive Officer in accordance with Article 17.1;
2. have all the powers and duties of the Chief Executive Officer under Article 17.4; and

Commented [ESM40]: Added qualified Board override for CEO nationality restriction. Preserves policy intent while avoiding absolute rigidity that could leave the CEO position unfillable.

Commented [ESM41]: Provides a member-driven fallback to appoint an Acting CEO when the Board lacks quorum under Article 19.6. Avoids reliance on Court intervention under s.136 of the Act. The Acting CEO has full Article 17.4 powers, is subject to Article 17.2 removal and Article 17.3 nationality requirements, and serves only until the Board restores quorum and makes a permanent appointment under Article 17.1.

3. be subject to Articles 17.2 and 17.3, mutatis mutandis.

18) REMUNERATION OF DIRECTORS

18.1) Except for the Chief Executive Officer, a Director shall not be an employee of the ~~Company~~company and subject to the approval of the Annual General Members' Meeting may receive such remuneration or compensation as may be prescribed.

However, Directors shall be entitled to be reimbursed for reasonable out-of-pocket expenses (including travelling, hotel and subsistence expenses) as determined by the Board from time to time, incurred in the fulfilment of their duties towards the Company or otherwise in connection with the business of the Company.

19) PROCEEDINGS OF DIRECTORS

19.1) Chairperson and ~~vice-chairperson~~~~Deputy Chairperson~~ – The Directors shall elect from one of their members a ~~c~~Chairperson and a ~~deputy or v~~ice-~~c~~Chairperson.

1. The chairperson or, failing him, the ~~vice-chairperson, deputy chairperson,~~ shall preside at all meetings of the Directors, but if at any meeting the chairperson and ~~vice-chairperson~~~~deputy chairperson~~ are not present within fifteen (15) minutes after the time appointed for holding the same, the Directors present may choose one of their members to be the chairperson of the meeting.

19.2) Notice of Board Meeting – A Director or, if requested by a Director to do so, an employee or the secretary of the Company, may convene a meeting of the Board by giving at least fourteen (14) days notice provided that shorter notice may be given where at least three-fourths of the Directors consent to such shorter notice or if the chairperson of the Board considers that the business of the meeting is urgent.

1. A notice of a meeting of the Board shall be sent to the Chief Executive Officer, every Director and the notice shall include the date, time, and place of the meeting and the matters to be discussed. The notice may be delivered by post, fax, electronic mail or such other method as the Board shall reasonably determine from time to time.
2. An irregularity in the notice of a meeting is waived where all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or where all Directors entitled to receive notice of the meeting agree to the waiver.

19.3) Methods of holding Board Meetings – A meeting of the Board may be held:

1. by a number of the Directors who constitute a quorum as provided for in Article 19.6, being assembled together at the place, date, and time appointed for the meeting;
2. by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting; or
3. such other methods of communication whereby all Directors participating and constituting a quorum can simultaneously communicate with each other throughout the meeting.

19.4) Regular meetings of the Board will be held on dates to be determined by the Board. To the extent practicable, meetings should be held in different locations around the continent of Africa on a regular basis.

19.5) Every Director shall be entitled to attend each Board meeting.

19.6) Quorum - A quorum for a meeting of the Board shall be the majority of Directors, which shall be not less than five (5) Directors.

1. No business may be transacted at a meeting of Directors if a quorum is not present, provided that, if a quorum is not constituted, the Directors present may adjourn the meeting. If a meeting is adjourned for more than 24 hours, notice shall be given to those Directors not present at the meeting at the time of adjournment. At the adjourned meeting, the Directors present, not being less than three in number, shall constitute a valid quorum.

~~1.2.~~ For the purposes of appointment of Directors where the Board is inquorate as per Article 19.6, the quorum for a meeting of directors called exclusively to re-constitute the initial Board quorum shall be the number of directors in office and entitled to vote at such meeting.

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Commented [ESM42]: Proposal made to re-constitute quorum in the event that the board is inquorate and there is less than 3 directors entitled to vote.

19.7) Voting - Every Director shall have one vote. The chairperson shall not have a casting vote.

19.8) A resolution of the Board is passed if a majority of the votes cast on it, by eligible Board ~~m~~Members, is in favour of the resolution.

19.9) A Director present at a meeting of the Board is presumed to have agreed to and to have voted in favour of a resolution of the Board unless he/she expressly dissents from or votes against the resolution at the meeting.

19.10) Minutes - The Board shall ensure that minutes are kept of all proceedings at meetings of the Board.

19.11) Any such minutes shall be approved by the Board at its next succeeding meeting where a majority of directors so decide pursuant to a simple resolution.

19.12) Resolutions in writing - A resolution in writing, signed or assented to by two-thirds of all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

1. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.
2. A copy of any such resolution must be entered in the minute book of Board proceedings.

19.13) Other proceedings - Except as provided herein, the Board may regulate its own procedures.

20) SECRETARY

20.1) The secretary shall be appointed by the Directors.

20.2) No person shall be appointed as secretary unless that person has consented to be the secretary and has the qualifications specified under section 165 of the Act.

21) INDEMNITY AND INSURANCE

21.1) The Directors and employees of the Company shall be indemnified by the Company to such extent as is authorised by the Act.

~~21.2)~~ The Board may cause the Company to provide insurance to a Director or employee of the Company to such extent as is authorised by the Act.

~~21.2)~~ ~~21.3)~~ Any indemnity given in breach of section 161 of the Act shall be void.

Commented [ESM43]: Clarification to ensure that no indemnity is provided in breach of this section.

22) WINDING-UP

22.1) If the Company shall be wound up while a person is a Registered Member or within one year after that person ceases to be a Registered Member, every Registered Member of the Company will contribute such amount as may be required, not exceeding Rs. 500 (five hundred Mauritian rupees) to the assets of the Company for payment of the Company's debts and liabilities accrued and of the costs and expenses of winding-up before the Registered Member ceases to be a Registered Member, ~~and of the costs and expenses of winding-up.~~

Commented [ESM44]: Rearranged for clarity

~~22.2)~~ If on the winding up or dissolution of the Company, there remain any surplus assets after satisfaction of the Company's debts and liabilities, the surplus shall not be paid to the members but shall instead be given or transferred to some other institution or institutions having objects similar to the objects of the Company. The institution to which the surplus shall be transferred shall be determined by the members or, in default of such determination, by the liquidator after considering the advice of the Board.

~~22.2)~~ ~~22.3)~~ A resolution to put the Company into liquidation shall require a Special Resolution.

Commented [ESM45]: Compliance with s.105(1)(e) of the Act.

23) COMMON SEAL, AUTHENTICATION OF DOCUMENTS

23.1) The Company may have a seal, known as the common seal, which shall contain the name of the Company and which shall not be affixed to any instrument without the authority of the Board and/or the Chief Executive Officer.

23.2) All instruments, deeds, acts and documents executed on behalf of the Company may be in such form and contain such powers, provisos, conditions, covenants, clauses and agreements as the Board and/or the Chief Executive Officer may think fit and shall be signed either by the Chief Executive Officer or by two Directors or by such other person or persons as the Board may from time to time appoint.

23.3) All bills of exchange, promissory notes or other negotiable instruments shall be accepted, made, drawn or endorsed for and on behalf of the Company and all cheques or orders for payment shall be signed either by the Chief Executive Officer or by two

Directors or by such other person or persons as the Board may from time to time appoint.

23.4) Articles 23.2 and 23.3 shall be subject to such authorisation policy as may be determined or varied by the Board from time to time.

23.5) All monies belonging to the Company shall be paid to such bankers as the Board of Directors shall from time to time appoint and all receipts for money paid to the Company shall be signed by the Chief Executive Officer or a Director or by such officer as the Board may from time to time appoint.

23.6) Cheques or other negotiable instruments paid to the Company's bankers for collection and requiring the endorsement of the Company shall be endorsed on its behalf by the Chief Executive Officer plus one Director who shall be so nominated and mandated by the Board, or by two Directors equally mandated by the Board in case of unavailability of the Chief Executive Officer.

23.7) Notwithstanding Articles 23.1 to 23.6, both inclusive, the Chief Executive Officer may where it is urgent and necessary,

1. with the concurrence of the ~~c~~Chairperson (elected in compliance with Section 158 of the Act); and
2. another appropriate Director take such decisions, as are warranted in these circumstances, and in the best interest of the AFRINIC, to avoid any undue delay which may negatively impact on the Company's affairs.

23.8) Any decision taken under Article 23.7 shall be communicated to the Board within 12 hours following such decision by e-mail.

23.9) The Bylaws shall be signed by both the ~~c~~Chairperson and the Chief Executive Officer of the Company. **[Inserted at the 2020 AGMM]**