

Dear AFRINIC Resource Members and Stakeholders,

## **PROPOSED BYLAWS COMPLIANCE BOARD ELECTION FRAMEWORK**

**CURRENT SITUATION:** AFRINIC does not have office bearers also called directors, and the board is currently vacant, and the receiver, under a judicial order, is mandated to reconstitute the board as per the AFRINIC bylaws.

### **TISPA Proposed Election to the Court.**

- **Four regional seats** (out of the six sub-regional seats: **Northern, Western, Indian Ocean, Central**, Southern, Eastern Africa; **Article 13.5**).
- **Two independent seats** (non-regional, competency-based; Seats 7 and 8; **Article 13.4(ii)**).

### **This results in six elected directors.**

- **Remaining Seats:** Two regional seats are left unslated, and the Chief Executive Officer (CEO) occupies Seat 9 ex-officio (**Article 13.4(iii)**), potentially bringing the total to seven directors if a CEO is in place.

### **This results in seven directors if CEO is appointed.**

### **Analysis Based on AFRINIC Bylaws 2020**

#### **1. BOARD COMPOSITION AND QUORUM REQUIREMENTS**

- Board Composition (**Article 13.4**):
  - The board consists of nine directors:
    - Six regional directors (Seats 1–6; **Article 13.5**).
    - Two non-regional directors (Seats 7–8; **Article 13.4(ii)**).
    - One CEO ex-officio (Seat 9; **Article 13.4(iii)**).

**Article 13.9 requires at least one director to be ordinarily resident in Mauritius, per the Companies Act 2001.**

### **Quorum for Board Meetings (Article 19.6):**

**The quorum is the majority of directors, which must be not less than five (5) directors.**

## **PROPOSED BYLAWS COMPLIANT BOARD ELECTION - SCENARIO:**

- Electing **four regional directors** and **two non-regional directors** results in **six elected directors**.
- If a CEO is in place (or appointed by the receiver/interim board), the total is seven directors (**six elected + CEO**).
- **With seven directors, the quorum requirement of five directors is met, allowing the board to conduct business, including calling an AGMM.**
- If no CEO is in place, the board would have six directors, still meeting the quorum of five directors.
- **Mauritius Residency: At least one of the six elected directors must be ordinarily resident in Mauritius (Article 13.9). This must be ensured during the election process.**

**Conclusion:** Electing six directors (four regional, two non-regional) satisfies the quorum requirement for a board meeting (Article 19.6), whether or not the CEO is in place, provided one director is Mauritius-resident.

## **2. CALLING AN ANNUAL GENERAL MEMBERS' MEETING (AGMM)**

### **Authority to Call AGMM (Article 11.1):**

- The board must call an AGMM annually, within six months of the company's balance sheet date and no later than 15 months after the previous AGMM.
- The board manages the company's affairs (Article 15.1–15.2), including calling meetings.

### **Quorum for Decision-Making:**

- With six or seven directors (six elected, plus the CEO if appointed), the board can form a quorum of five directors to make decisions, including calling an AGMM.

### **Next Board Action Plans:**

- **The six elected directors (plus the CEO, if present) can convene a board meeting (Article 19.3), achieve a quorum (Article 19.6), and pass a resolution to call an AGMM.**
- **The board can issue the required notice and outline the agenda, including elections for the remaining two regional seats or other business (Article 12.2).**

**In Conclusion:** A board with six elected directors (four regional, two non-regional) can call an AGMM, as it meets the quorum requirement and has the authority to manage company affairs.

**REMEMBER:** AFRINIC has in the past had less than 8 or 9 directors due to resignations or death or dismissal of directors and those who remained were able to conduct company business.

### 3. NOMCOM FORMATION AND AFRICAN INTERNET COMMUNITY PARTICIPATION

NomCom Composition and Role (Article 9):

- The NomCom consists of a chairman and three other members, appointed by the board after a public call for volunteers from the African Internet community.
- Article 9.1 and 9.1-A: NomCom members cannot be candidates for election or domiciled in a region whose seat is up for renewal.

#### **Leaving Two Regional Seats Unslated:**

- The scenario proposes electing four regional seats, leaving two regional seats (e.g., Southern and Eastern Africa, per the election sequence in Article 13.6) unslated.
- These two seats can be filled at a subsequent AGMM, with candidates nominated through the NomCom process.

#### **AFRICA Internet Community Participation:**

The reconstituted board (six or seven directors) will enable the appointment of the NomCom through issuing a public call for volunteers (**Article 9**), **enabling the African Internet community to participate** by:

- Volunteering to serve on the NomCom.
- The NomCom, once appointed, will:
  - Call for candidates for the four vacant regional seats.
  - Call for candidates for the two vacant non-regional independent seats.

#### **In Conclusion:**

- **Leaving two regional seats unslated allows the African Internet community to participate in the NomCom process for future elections.**
- The reconstituted board (six or seven directors) can appoint a NomCom, issue a public call for volunteers, and facilitate nominations for the remaining two seats, in the next elections of 2026 where those seats which were not slated in 2025 election would be slated in 2026
- **This then enables the process to comply with the staggering nature of doing AFRINIC elections as per the bylaws.**

## 4. ADDITIONAL CONSIDERATIONS

### CEO Status:

- If a CEO is in place, they occupy Seat 9 ex-officio, resulting in a seven-director board (four regional, two non-regional, one CEO), which exceeds the quorum requirement.
- If no CEO exists, the receiver or interim board may need to appoint one (Article 17.1), or the six elected directors can function as a quorate board to appoint a CEO later.

### Mauritius Residency (Article 13.9):

- The receiver must ensure at least one of the six elected directors (or the CEO) is ordinarily resident in Mauritius to comply with the Companies Act 2001.

### Election Sequencing (Article 13.6):

- The bylaws specify a staggered election cycle for regional directors (e.g., Northern/Western, Indian Ocean/Central, Southern/Eastern). The receiver's choice of four regional seats should align with this cycle (e.g., electing Northern, Western, Indian Ocean, and Central Africa seats, leaving Southern and Eastern for later).
- The two non-regional seats (7 and 8) align with the Northern/Western and Indian Ocean/Central election cycles (Article 13.7), so their inclusion is consistent.

### Community Engagement:

- The NomCom's public call for volunteers and candidate nominations (Article 9) ensures the African Internet community's participation, a core principle of AFRINIC's bottom-up governance model (Article 23, Policy Development Process).
- Leaving two seats unslated allows the community to focus nominations on those regions, enhancing targeted participation.

## 5. Does This Setup Meet All Requirements?

**Quorate Board:** Yes, six elected directors (plus the CEO, if present) meet the quorum of five directors (Article 19.6), enabling the board to function.

**Calling an AGMM:** Yes, the quorate board can call an AGMM with proper notice (Articles 11.1, 12.2), allowing further governance actions, including elections for the remaining seats.

**NomCom and Community Participation:** Yes, the board can appoint a NomCom (Article 9), which issues a public call for volunteers and candidates, enabling the African Internet community to participate in nominating and electing directors for the two remaining regional seats at the AGMM.