

August 12, 2016

Mr. Oscar Robles  
Executive Council Chairman, Numbers Resource Organization  
c/o LACNIC  
Rambla República de México 6125  
CP 11400 Montevideo  
Uruguay

**Re: Regional Internet Registry Accountability Assessment Summary Reports**

Dear Mr. Robles:

It is our pleasure to present to you the summary reports produced by the Regional Internet Registries in response to the independent accountability assessments undertaken by each of the RIRs. The five RIRs that participated in the accountability-assessment process are:

- AFRINIC (African Network Information Center)
- APNIC (Asia Pacific Network Information Centre)
- ARIN (American Registry for Internet Numbers)
- LACNIC (Latin American and Caribbean Internet Addresses Registry)
- RIPE NCC (Réseaux IP Européens Network Coordination Centre)

The RIR accountability-assessment process originated in part in response to the National Telecommunications and Information Administration's March 14, 2014 call to transition the stewardship of Internet Assigned Numbers Authority from the control of the U.S. government to the international Internet community, as represented by the Internet Corporation for Assigned Names and Numbers. As a key element of that transition, NTIA required that ICANN propose a governance model that would, among other things, "support and enhance the multistakeholder model," that is, include the meaningful participation of ICANN's many constituencies.

The RIRs, in light of their role on behalf of the numbers community, felt the need to carry out a process similar to that that ICANN was undertaking. Accordingly, over the past year, the RIRs have each completed a review of their governance policies and procedures with a special focus on assessing the viability of their multi-stakeholder governance and policymaking—or, viewed negatively, their "risk of capture," that is, whether one constituency could gain unwarranted control over an RIR's governance and policymaking. Each RIR retained independent legal counsel (or other expert advisers) to conduct the assessment. The assessments began with the completion of a data-collection questionnaire, prepared by ARIN and Caplin & Drysdale, that queried each RIR in 13 areas of concern, including the nature of the organization's governing documents, the election and removal of the governing body, the rights of the members in governance and otherwise, which regulatory bodies (and voluntary associations) have jurisdiction over the organization, and what financial-disclosure and -oversight and ethics policies the organization had adopted.

Using the data collected, each counsel prepared a confidential report to the governing board of its RIR detailing the organization's governance procedures, determining how responsive those procedures are to each organization's constituents, and assessing the probability that any one constituency could gain improper control over the RIR as a whole or of any of its prominent functions. In response to the detailed reports from counsel, each RIR's governing body prepared a summary report, presenting the general assessment of the RIR's accountability and highlighting areas for improvement. Those summary reports are presented here as received from each RIR. (As was agreed among the RIRs, each RIR determined the format and content its own summary report.)

In conclusion, each RIR committed to reviewing the suggestions for improvement and continuing the governance-assessment process on a regular basis.

We are pleased to have been of service to you in this important process.

Very truly yours,

CAPLIN & DRYSDALE, CHARTERED

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## RIR ACCOUNTABILITY ASSESSMENT

### AFRINIC - MAY 2016

#### PUBLIC SUMMARY

(To be completed by the RIR's Governing Body in consultation with legal counsel and upon review of collected governance data)

This public summary of the accountability assessment will be provided to the NRO for compilation into an overall RIR Accountability Assessment Summary report.

#### 1. Overview

During 2015, AFRINIC engaged the services of an independent law firm, BLC & Associates Ltd. of Ebene, Mauritius, to conduct a general assessment of AFRINIC's governance structures, and analysis of specific risks of capture by various constituents and stakeholders. To ensure the independence of the assessment, a law firm was chosen that is not engaged in providing regular legal advice to AFRINIC.

Input to this assessment included documents filed with the Registrar of Companies in Mauritius, documents available on the AFRINIC web site, and documents that were inspected at the AFRINIC offices in Ebene, Mauritius.

#### 2. Describe the existing mechanisms or best practices which provide for RIR accountability to its community

AFRINIC allocates Internet number resources to its members following policies that are determined by the community and ratified by the Board. All policy proposals are discussed in a public mailing list and at a public meeting, and only if the Policy Development Working Group (PDWG) co-chairs determine that the proposal has rough consensus is the proposal forwarded to the Board for ratification. The PDWG co-chairs are elected by the community during public meetings, and serve two-year terms. Changes to the Policy Development Process (PDP) itself is subject to the same process of discussion, rough consensus, and Board ratification.

AFRINIC's finances are audited annually, and the audited financial statements are presented to the membership at an Annual General Members' Meeting (AGMM), in strict compliance with the Companies' Act of the Republic of Mauritius.

AFRINIC's Board of Directors consists of nine people, of whom eight are elected by the membership of AFRINIC, and one, the CEO, is appointed by the Board. Each elected Director serves for three years, and may then run for re-election. Every year, at the AGMM, elections are held for two or three of the eight elected seats, in a defined rotation sequence.

With the exception of the CEO, no Director may be an employee of the company.

#### 3. Describe any identified areas for potential improvement of the RIR accountability

mechanisms

The accountability assessment identified several areas in which minor improvements or clarifications could be made to AFRINIC's Bylaws or Constitution. These include the rights of different classes of members, independence of Directors, the process for electing Directors, the process for changing the Bylaws or Constitution, and the process for changing number resource policy.

4. Outline the process by which improvements to the RIR accountability mechanisms will be made

The issues that were identified can be addressed through changes to the AFRINIC Bylaws (also known as the Constitution). An outline of suggested changes was presented to the AFRINIC membership at the AGMM in June 2016. The changes are still under discussion, and are expected to be decided on by the membership in November 2016.

### **APNIC Accountability Assessment Summary**

APNIC retained the law firm Maddocks Lawyers to conduct a general assessment of APNIC's governance structures and analysis of specific risks of organisational capture by various constituents and stakeholders, and of the possibility of the deformation of APNIC's open and transparent policymaking process.

In conducting the general assessment, Maddocks Lawyers reviewed APNIC's corporate and governing constituent documents, and other documents that are publicly available at APNIC's website, and interviewed APNIC's General Counsel.

The general assessment concluded that APNIC is not subject to any substantial risk of capture by internal or external parties – such as an unrepresentative minority of members, or Governments, or APNIC's Executive Council or secretariat staff, or other parties. However, Maddocks Lawyers believe that any remaining risk can be further reduced by a mechanism of appointment of a minority (say three) of independent (non-elected and non-member aligned members) of the Executive Council for a staggered three-year term.

The assessment noted that the following factors contributed to the low risk of the possibility of improper capture of APNIC by an unrepresentative minority of constituents or stakeholders:

- APNIC being a membership organisation with a broad and open membership base. APNIC currently has over 5,000 members, each with voting right.
- The ability of all APNIC members to vote online via “my APNIC”
- The relatively short (two year) term of members of APNIC's governing Executive Council, and the staggered election of such members of the Executive Council (with the renewal of approximately half of the Executive Council at each annual general meeting)
- APNIC not being financially or organisationally dependent upon any one person
- The ability of APNIC members to [overturn decisions of APNIC EC] under APNIC's by-laws.

Nevertheless, the assessment recommended that APNIC consider the introduction of a small number of independent members of the Executive Council to further reduce any risk of capture.

APNIC routinely reviews its governance practices and structures. APNIC's Executive Council has received the APNIC Accountability Assessment as input to that ongoing process, and will consider the assessment for possible improvements in APNIC's governing structures.

### **ARIN Accountability Assessment Summary**

ARIN retained the law firm of Caplin & Drysdale to conduct a general assessment of ARIN's governance structures and analysis of specific risks of institutional capture by various constituents and stakeholders and of the possibility of the deformation of ARIN's open and transparent policy-making process.

Information reviewed as part of assessment included material available on ARIN's website, from other publicly available sources, from an interview with ARIN's associate general counsel, and otherwise provided by ARIN.

The general assessment noted potential clarity improvements of ARIN Bylaws with respect to the staggered Trustees terms and the process that allows for Board removal of a Trustee.

The capture assessment considered the possibility of improper control of ARIN by an unrepresentative minority of constituents or stakeholders, whether that be from a portion of the membership, the Board of Trustees, ARIN's staff, or external parties. The independent assessment concluded that there was not a significant risk of improper capture of the organization by the membership, staff, or external parties.

The assessment did note that the ARIN Board of Trustees has substantial power over the organization, principally the result of the Board's ability to act unilaterally to amend ARIN's Articles of Incorporation and Bylaws and due to the lack of term limits for Trustees. Although such power is common for nonmembership corporations, it is not the norm for membership organizations. The power of the Board of Trustees is offset significantly by the nomination committee process, the Bylaws requirement that there be at least one more trustee candidate than the number of vacancies, and the Trustees' staggered terms. Additionally, it was noted that the transparency practices of the ARIN Board, the membership's ability to remove Trustees, and the independence of individual Trustees from the organization also serve as practical restraints against capture.

ARIN routinely reviews its governance practices and structures, and the Board of Trustees has received the ARIN Accountability Assessment as input to that ongoing improvement process. As a result, the Board of Trustees has already initiated some changes to the ARIN Bylaws regarding those items that were identified as needing clarification. The Board will further consider the assessment for possible improvements in ARIN's governing structures.

### **LACNIC Accountability Assessment Summary**

During the second half of 2015, LACNIC conducted an accountability assessment, which consisted in hiring of a law firm to identify any accountability weaknesses and related areas for improvement like capture risks, that is the risk of LACNIC falling under the control of one or more natural persons or legal entities, with or without danger of deviation from its institutional purpose and objectives and/or of detriment to the Internet community as a whole.

The independent law firm retained was Olivera Abogados from Montevideo Uruguay, which in order to perform their evaluation, they reviewed material available on LACNIC's website, from other publicly available sources, and other materials otherwise provided by LACNIC. Also after their initial primary assessment they conducted an interview with LACNIC's CEO Oscar Robles Garay and General Counsel Eduardo Jiménez de Aréchaga,

The accountability report included a general assessment of LACNIC's governance structures and analysis of specific risks of institutional capture or improper control by an unrepresentative minority of constituents or stakeholders, whether that be from a portion of the membership, the Board of Directors, LACNIC's staff, or external parties, and concluded that there was no significant risk of improper capture of the organization by the Board, staff, or external parties.

When analyzing the Board, the report noted that the transparency practices of LACNIC's Board, the membership's ability to remove Board members, and the diversity and independence of individual Board members from the organization also serve as practical restraint against capture. However, the report suggested some improvements of LACNIC Bylaws to provide more safeguards, establishing a special majority of the Board to adopt important decisions (e.g. selection of CEO, proposal of amendment to the bylaws, approval of Budget and Financial Statements, and sale of significant assets).

Regarding the membership, although it also concluded it did not pose a significant risk, the assessment did note that the LACNIC General Assembly of Members has substantial power over the organization, specifically the power of the Assembly to amend LACNIC's bylaws by a simple majority of members.

Although, as the final authority of the organization, such power is common for a General Assembly of Members to possess, the assessment recommended to include certain protections and safeguards for diversity and minorities of members, from decisions from the majority that might affect their rights. However, a balance has to be reached between the protections of diversity and rights of minorities, from decisions adopted by part of the membership, and the need for the organization to function without considerable encumbrances (e.g. unrealistic majorities), that may hinder the functioning of LACNIC in the future (e.g. de facto veto power from minority).

LACNIC routinely reviews its governance practices and structures, and the Board has received the LACNIC Accountability Assessment as input to that ongoing improvement process. As a result of this assessment, the Board is informed about the associated risks of capture that may prevent or diminish its accountability in the future. Further, the Board could propose in future General Assembly of Members changes to the LACNIC Bylaws they deem necessary to manage those risks identified on the assessment report.



## **Governance Structure and Accountability of the RIPE NCC**

The RIPE NCC engaged an independent third party to analyse its governance structure and accountability. The RIPE NCC Executive Board reviewed the analysis and did not recognise any major risks or concerns. This report presents a summary of the outcome of the third party independent analysis.

### **1. Introduction**

The RIPE NCC is an association with full legal entity status according to Dutch law. The governance rules applicable to the RIPE NCC can be found in its Articles of Association and in Book 2 of the Dutch Civil Code.

All corporate governance documents are published on the RIPE NCC's website:  
<https://www.ripe.net/about-us/legal>

### **2. Relationship between the RIPE NCC and its members**

The legal relationship between a Dutch association and its members is governed by the law, articles of association, regulations that were validly adopted, resolutions that were validly passed, and principles of reasonableness and fairness. Next to this institutional relationship between the association and its members, the RIPE NCC has a contractual relationship with its members.

The RIPE NCC is an open association. Every legal entity or natural person may sign a Standard Service Agreement and become a candidate member. After a period of six months, the candidate membership is (automatically) converted into a full membership with voting rights.

### **3. The RIPE NCC Executive Board – Management Team**

The Executive Board is charged with the management of the RIPE NCC. The Executive Board is appointed by the General Meeting from a list of nominees to be drawn up by the members. A nomination for the appointment of a member of the Executive Board needs the written support of at least five RIPE NCC members. The Executive Board members are appointed for a period of three years and are eligible for immediate re-appointment.

A member of the Executive Board may be suspended or dismissed by the General Meeting at any time. A resolution to suspend or dismiss a member of the Executive Board requires a majority of at least two thirds of the votes cast.

The Executive Board appoints a Management Team that may consist of one or more Managing Directors who are employed by the association. The Executive Board delegates to the Management Team all operational decisions with respect to the Standard Service Agreement. The Executive Board may delegate other powers to the Management Team and give a limited power to one or more members of the Management Team to represent the association. Currently, the Executive Board has appointed one Managing Director as member of the Management Team.

### **4. General Meeting**

The General Meeting of the RIPE NCC has the following powers:

- (1) Appointment, suspension and dismissal of members of the Executive Board;
- (2) Approval of certain resolutions of the Executive Board;
- (3) Approval of the RIPE NCC's annual financial report;
- (4) Grant of discharge to the members of the Executive Board for management duties performed during the previous financial year;
- (5) Adoption of the RIPE NCC Charging Scheme with respect to the coming financial year upon proposal of the Executive Board;
- (6) Adoption of amendments to the Standard Service Agreement upon proposal by the Executive Board;
- (7) Approval of new Arbiters and/or dismissal of current Arbiters and/or adoption of amendments to the arbitration procedure, upon proposal by the Executive Board; and
- (8) Amendment of the Articles of Association and dissolution of the association.

According to Dutch mandatory law, the General Meeting also has the power to resolve in respect of a conversion, legal merger or demerger of the RIPE NCC.

A group of members who are jointly entitled to cast at least two percent of the total number of possible votes has the right to propose agenda items for the General Meeting. The Executive Board is obliged to add these items to the agenda.

A group of members who are jointly entitled to cast at least ten percent of the total number of possible votes may request the Executive Board to convene a General Meeting within a period of four weeks. If this request has not been honoured within 14 days, this group of members may proceed to convene the General Meeting themselves.

A group of at least 300 members of the RIPE NCC may request the Enterprise Chamber (Ondernemingskamer) of the Amsterdam Court of Appeal (Gerechtshof Amsterdam) to order an inquiry (enquête) into the affairs of the association.

## 5. Arbitration procedure

There is an arbitration procedure in place for the settlement of disputes, between members on the one hand and the management team on the other hand, regarding decisions of the Management Team with respect to Standard Service Agreements. Any disputes that may arise from the RIPE NCC Standard Service Agreement shall be settled in accordance with the RIPE NCC Conflict Arbitration Procedure.

The RIPE NCC Conflict Arbitration Procedure is of an informal nature and is not meant to fall within the scope of the "Arbitration" as described in the Dutch civil law (Wetboek van Burgerlijke Rechtsvordering, Vierde Boek, "Arbitrage"). Parties involved in a dispute have the option to challenge the arbiters' ruling at Dutch or other national competent courts.