

## **ADDENDUM TO AGMM2020 AGENDA ITEM 6 AMENDMENTS TO AFRINIC BYLAWS SPECIAL RESOLUTION SR1 TO SR28**

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### **AFRINIC Proposed Bylaws Changes**

#### **General Note:**

1. The following changes (see in bold characters) to AFRINIC's Bylaws, together with the rationale thereto, are hereby being proposed as special resolutions to be resolved at the AFRINIC Annual General Members' Meeting on 18 September 2020.
2. It should be noted that the rationale(s) added to each proposed amendment is to assist members in understanding the proposed amendments, and does not form part of the resolutions being proposed.
3. Article numbers or text will be adjusted as appropriate according to which resolutions pass or fail.

#### **SPECIAL RESOLUTIONS IN RESPECT OF THE PROPOSED AMENDMENTS TO AFRINIC BYLAWS: -**

WHEREAS, the Governance Committee was mandated, *inter-alia*, to review the existing provisions of the AFRINIC Bylaws and to propose such amendments as it may deem appropriate;

WHEREAS, consistent with the bottom-up process, the Governance Committee had, on several occasions, called for comments as well as proposals for amendments from various stakeholders, including the Community;

WHEREAS, after analysing all input, the Governance Committee gave drafting instructions to the legal team who then produced a draft proposal for its consideration;

WHEREAS, the said draft proposal received unanimous consensus at the level of the Governance Committee which then resolved to submit same to the Community for its review and comments, *if any*. The call for review and for comments made on 12 August 2020 was limited to those proposed amendments which the Governance Committee had approved earlier.

WHEREAS, the Governance Committee acknowledges that it did receive a few comments from the Community following its invitation dated 12 August 2020. It is to be noted that these were outside the ambit of the call for review and for comments dated 12 August 2020 as they were mostly either fresh proposals or expressions of specific opinion while others were opinions expressed in generic terms. They did not address the proposals being made by the Governance Committee;

WHEREAS, notwithstanding the above, the Governance Committee examined them and did not find any substantial proposal that it could consider;

WHEREAS, following the review exercise conducted by the Governance Committee, the Board of Directors has also taken cognizance of the proposed amendments to the current Bylaws.

WHEREAS, pursuant to Article 7.7 of the Bylaws, it is, provided *inter-alia*, that the procedure for amending the Bylaws shall be by way of special resolution.

IT IS NOW THEREFORE RESOLVED AS FOLLOWS:

### **1. Special Resolution 1 (SR1)**

Under article 1 of the Bylaws, to delete the definition of ‘Associate Member’ and to substitute same with the following:

**“Associate Member: Any person, corporate or otherwise, who 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.”**

**Rationale for proposed amendment:** To provide for a concise definition as well as to ensure consistency with the definition provided for Resource Members.

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### **2. Special Resolution 2 (SR2)**

Under article 1 of the Bylaws, to delete the definition of ‘Board’ and to substitute same with the following:

**“Board: “Board” or “Board of directors” or “Directors”, in relation to this Company, means the directors of the company for the time being and where the number is not less than the required quorum acting together as a Board of directors”**

**Rationale for proposed amendment:** To provide for clarity on the interchanging usage of the terms 'board', 'board of directors', and 'directors' whereby they appear in the Bylaws.

### 3. Special Resolution 3 (SR3)

Under article 1 of the Bylaws, to amend the definition of “Company” so that it may be read as follows:

“Company: **African Network Information Centre (AfrINIC) Ltd**, a company incorporated in the Republic of Mauritius.”

**Rationale for proposed amendment:** AFRINIC Ltd is a non-existent entity. Thus, to ensure that the reference is made to the full legal name of the company as it appears on its Certificate of Incorporation.

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### 4. Special Resolution 4 (SR4)

Under article 1 of the Bylaws, to amend the definition of Director so that it may be read as follows:

"A person elected to the office of director at an annual Members’ meeting **or appointed in accordance with article 13.14 of the Bylaws** and the Chief Executive Officer in an ex-officio capacity as the context indicates."

**Rationale for proposed amendment:** To give full effect to the provisions of article 13.14 of the Bylaws.

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### 5. Special Resolution 5 (SR5)

Under article 2 of the Bylaws, to amend article 2.1 thereof so that it may be read as follow:

“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**”.

**Rationale for proposed amendment:** To ensure that the reference is made to the full legal name of the company as it appears on its Certificate of Incorporation, and that the acronym 'AFRINIC' is used as the business name only.

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## 6. Special Resolution 6 (SR6)

Under article 4 of the Bylaws, to add new sub-article 4.1A which may be read as follows:

**“Notwithstanding the above, the Chief Executive Officer may, in line with the Company’s objects, determine and implement such administrative fee as he may deem appropriate to cover the costs of such activities organised by the Company from time to time.”**

**Rationale for proposed amendment:** Since organising AFRINIC corporate events such as the Public Policy Meeting is an operational matter conducted under the supervision of the Chief executive Officer (CEO), the more so that it is open to the Internet community at large, it is considered that it was imperative and in the interests of the Resource Members that the CEO be empowered to apply such administrative fees as he may deem appropriate to cover for the aforesaid events' associated costs.

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## 7. Special Resolution 7 (SR7)

Under article 5 of the Bylaws, to amend article 5.1 thereof so that it may be read as follows:

**“The registered officer shall be at 11th Floor, Standard Chartered Tower, Cybercity, Ebène, Mauritius.”**

**Rationale for proposed amendment:** To reflect the change of name of the building hosting AFRINIC Corporate Office.

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## 8. Special Resolution 8 (SR8)

Under article 6 of the Bylaws, to amend article 6.1 thereof so that it may be read as follows:

**“Subject to the other provisions of this Article, membership shall be open to:**

- (i) 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
- (ii) any other Person who is approved by the Board or the members.”

**Rationale for proposed amendment:** To ensure that article 6.1 is not read in isolation and instead to be read in conjunction with the other provisions of article 6. In other words, to ensure that article 6 is read in its entirety, i.e. as a whole.

## 9. Special Resolution 9 (SR9)

Under article 6.2 of the Bylaws, to delete the word “or” and substitute same with the word “and” instead.

**Rationale for proposed amendment:** To ensure consistency with the definition provided to the term 'Member' in the Interpretation Section - article 1 refers.

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## 10.Special Resolution 10 (SR10)

Under article 7 of the Bylaws, to delete the provisions of Article 7.1 and to substitute same with the following:

**“Subject to the other provisions of this Article, Members shall be entitled to receive notice and attend all Community Meetings.”**

**Rationale for proposed amendment:** To ensure that article 7.1 is not read in isolation and instead to be read in conjunction of the other provisions of article 7, in particular to clear all confusions pertaining to the limited right attributed to Associated Members.

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## 11.Special Resolution 11 (SR11)

Under article 7 of the Bylaws, to amend article 7.2 thereof so that it may be read as follows:

**“Subject to Articles 7.4 and 7.5 below, the Members shall be entitled:**

- (i) by majority vote on the day of each Annual General Members’ Meeting, to elect the Directors of the Company in accordance with Article 13.5 below; and
- (ii) 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.”

**Rationale for proposed amendment:** To ensure that article 7.2 is not read in isolation and instead to be read in conjunction of the other provisions of article 7, in particular to clear all confusions pertaining to the limited right attributed to Associated Members.

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## **12.Special Resolution 12 (SR12)**

Under article 9 of the Bylaws, to amend article 9.1 thereof so that it may be read as follows:

**“Subject to Article 9.3(ii) below**, 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.”

**Rationale for proposed amendment:** To lay emphasis on the functions of the NomCom so that situations that may potentially give rise to conflict of interest are avoided.

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## **13.Special Resolution 13 (SR13)**

Under article 9 of the Bylaws, to add new article 9.1A which may be read as follows:

**“No member of the Nomcom shall be eligible to stand as candidate for any election in respect of which the NomCom is required to find suitable candidates for such election held by the Company.”**

**Rationale for proposed amendment:** To avoid potential cases of conflict of interests and/or situations whereby a person acts as both 'judge and party' for his own election.

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## **14.Special Resolution 14 (SR14)**

Under article 12 of the Bylaws, to amend Article 12.7 thereof so that it may be read as follows:

**“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**.”**

**Rationale for proposed amendment:** To clarify matters regarding the status and rights of Associate Members.

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## 15.Special Resolution 15 (SR15)

Under article 12 of the Bylaws, to amend article 12.10(ii) thereof so that it may be read as follows:

“The quorum for an Annual General Members’ meeting shall be composed of a minimum of ten (10) members in person comprising:

- a) Four (4) Directors elected **or appointed, as the case may be**, to represent a region;
- b) One (1) Director elected **or appointed, as the case may be**, on a non-regional criterion; and
- c) Five (5) Resource Members, **either attending in person or otherwise.**”

**Rationale for proposed amendment:** To give full effect to the purpose and intent of article 13.14 of the Bylaws, and to ensure no discrimination is made between elected and non-elected directors.

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## 16.Special Resolution 16 (SR16)

Under article 12 of the Bylaws, to amend article 12.12(i) thereof so that it may be read as follows:

“**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;”

**Rationale for proposed amendment:** To avoid capitalising the term 'member' in the present context as well as to clarify that not all members have automatic voting rights in as much as even a Resource Member would not be eligible to vote if it is not 'in good standing' at the time of the AGMM - the provisions of the RSA refers.

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## 17.Special Resolution 17 (SR17)

Under article 12 of the Bylaws, to amend article 12.12(ii) thereof so that it may be read as follows:

“**Subject to the provisions of this Article**, a proxy for a member may attend and be heard at an Annual General Members’ Meeting as if the proxy were the member;”

**Rationale for proposed amendment:** To avoid capitalising the term 'member' in the present context as well as clarify that article 12 must be read conjunctively and in its entirety.

## 18. Special Resolution 18 (SR18)

Under article 12 of the Bylaws, to amend article 12.12(v) thereof so that it may be read as follows:

**“Subject to the provisions of this Article, a proxy form shall be sent with each notice sent to a member;”**

**Rationale for proposed amendment:** To avoid capitalising the term 'member' in the present context as well as clarify that article 12 must be read conjunctively and in its entirety.

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## 19. Special Resolution 19 (SR19)

Under article 12 of the Bylaws, to amend article 12.12(viii) thereof so that it may be read as follows:

**“No member entitled to vote during an election by the Company or any other person, as the case may be, shall carry more than five (5) proxies during the said election;”**

**Rationale for proposed amendment:** To ensure that all holders of a proxy, irrespective of their status (i.e. member or non-member), carry not more than 5 proxies during the same election.

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## 20. Special Resolution 20 (SR20)

Under article 12 of the Bylaws, to amend article 12.14 thereof as follows:

- (a) by adding at the beginning thereof the words **“Subject to Article 7,”**
- (b) to delete the word **“Member”** wherever it appears and substitute same with the word **“member”** accordingly.

**Rationale for proposed amendment:** To avoid capitalising the term 'member' in the present context as well as to harmonise article 12.14 with that of article 7 so that the status of Associate Members is clarified.

## **21.Special Resolution 21 (SR21)**

Under article 13 of the Bylaws, to amend article 13.1 thereof so that it may be read as follows:

“Subject to the provisions of Article 11 of the present Constitution **as well as the provisions of this article**, the Board shall call a meeting of members to appoint the Directors of the company where vacancies occur as a result of:

- (i) the expiry of the term of office of any Director;
- (ii) the removal or resignation of any Director in terms of Article 14 of this Constitution;
- (iii) the disqualification of any Director in terms of Article 13.10 of this Constitution;
- (iv) the untimely death of any Director;
- (v) the filing of a casual vacancy in terms of Article 13.14

**Rationale for proposed amendment:** To clarify that article 13.1 cannot be read in isolation, but instead should be conjunctively with the remaining provisions of the article 13.

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## **22.Special Resolution 22 (SR22)**

Under article 13 of the Bylaws, to amend article 13.14 thereof so that it may be read as follows:

“**Notwithstanding the other provisions but subject to provisions of article 13.10 of the bylaws, 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 14.1(ii), (iii) or (iv) below**, have power to appoint any person to be a Director. 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.”

**Rationale for proposed amendment:** To provide clear guidance to the Board when exercising its discretionary power to appoint a director to fill a casual vacancy.

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## **23.Special Resolution 23 (SR23)**

Under article 13 of the Bylaws, to add new article 13.14A which may be read as follows:

“**A director who has been appointed in accordance with Article 13.14 above shall have the same rights, duties and liabilities as any other director in the same position.**”

**Rationale for proposed amendment:** To clarify that no discrimination shall exist between an 'elected' and 'appointed' director.

## 24. Special Resolution 24 (SR24)

Under article 16 of the Bylaws, to amend article 16.4 thereof so that it may be read as follows:

“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 Chairperson or the entire Board.”

**Rationale for proposed amendment:** To provide that the advisory role to be undertaken by the Council of Elders be clarified through mutual agreement between the Board and the Council of Elders, thus avoiding potential conflicts that would otherwise arise.

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## 25. Special Resolution 25 (SR25)

Under article 18 of the Bylaws, to amend article 18.1 (al.1) thereof so that it may be read as follows:

“Except for the Chief Executive Officer, a Director shall not be an employee of the company and **may, subject to the approval of the Annual General Members’ Meeting, receive a monthly sitting allowance for attending meetings of the board or committees thereof. Such sum as may be approved at the Annual General Members’ Meeting shall be capped to a maximum of two board meetings per month and one committee meeting.**”

To also amend article 18.1(al.2) thereof so that it may be read as follows:

“**In addition to the above**, 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.”

**Rationale for both proposed amendments:** It is considered that a sitting allowance would not only motivate current directors but also attract other suitable candidates to the Board's election. Also, to clarify that both paragraphs ought to be read conjunctively.

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## 26.Special Resolution 26 (SR26)

Under article 19 of the Bylaws, to amend article 19.1 thereof so that it may be read as follows:

**“Subject to article 19.13 below, the Directors shall elect from one of their members a Chairperson and a deputy or vice Chairperson.”**

**Rationale for proposed amendment:** To allow for the internal procedure of appointment to be captured in the Board Handbook.

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## 27.Special Resolution 27 (SR27)

Under article 23 of the Bylaws, to add new article 23.9 which may be read as follows:

**“The Bylaws shall be signed by both the Chairperson and the Chief Executive Officer of the Company.”**

**Rationale for proposed amendment:** To give credit to the Chairperson of the Board under whose direction the provisions of the Bylaws are implemented.

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## 28.Special Resolution 28 (SR28)

WHEREAS, in addition to the aforesaid proposed amendments, a general review of the current Bylaws has also been conducted and the following additional amendments are hereby being proposed:

- (i) Under article 5.2, to delete the words **“The Act”** and substitute same with **“the Act”**.

**Rationale for proposed amendment:** Grammatical review of the word 'the'.

- (ii) To amend article 11.4 so that it may be read as follows: **“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.”**

**Rationale for proposed amendment:** To correct a typing error whereby the existing provision should have made reference to article 11.3 instead of 11.2.

- (iii) Under article 12.2(i), to delete the words “**a Annual General Members’ Meeting**” and to substitute same with “**an Annual General Members’ Meeting**”.

**Rationale for proposed amendment:** To correct a grammatical error as it currently appears in the provision.

- (iv) Under article 12.11(i) to delete the words “**voting at the Meeting**” and to substitute same with “**voting at the meeting**”.

**Rationale for proposed amendment:** To correct a grammatical error as it currently appears in the provision, the more so that the word 'Meeting' has been capitalised despite that no definition of same has been provided in the Interpretation Section.

- (v) Under article 12.11(vi), to delete the word “**Member**” and to substitute same with the word “**member**”.

**Rationale for proposed amendment:** To maintain the capitalisation of the word 'Member' as it appears would give the impression Associate Members also have the right to participate in a poll. Hence the proposed amendment.

- (vi) Under article 12.11(xii), to delete the words “**registered member or a Resource member**” and to substitute same with “**Registered Member or a Resource Member**” respectively.

**Rationale for proposed amendment:** The terms 'registered member and resource member' should start with capital letters as both have been defined in the Interpretation Section.

- (vii) Under article 12.13(iii), to delete the words “**Members’ meeting**” and substitute same with words “**members’ meeting**”.

**Rationale for proposed amendment:** To avoid capitalising the term 'member' in the present context