

# **Court record for case SC/COM/MOT/01411/2018**

Redacted by AFRINIC Ltd.

23 April 2019

This document contains a redacted version of the Court record for case SC/COM/MOT/01411/2018 in the Supreme Court of Mauritius.

This cover page was created by AFRINIC Ltd.

The remaining pages in this document were derived from the Court record as follows:

1. The court record was obtained from the Registry of the Supreme Court of Mauritius, as a certified copy on paper.
2. The paper copy was scanned to digital form by an attorney under AFRINIC's instructions.
3. The following information was redacted (blacked out) by AFRINIC staff:
  - a) The home addresses, national identity numbers, and other personal information about AFRINIC Directors was redacted; the names of the Directors were not redacted;
  - b) The names of past AFRINIC Directors, who were not party to the case, were redacted;
  - c) The names of persons who received service of court documents on behalf of the organisations where they are employed were redacted.
4. Duplicate copies of Annex 1 through Annex 4 were removed in the interests of saving space. Placeholders were added to indicate where the annexes had been removed.

Alan Barrett  
CEO, AFRINIC  
23 April 2019

IN THE SUPREME COURT OF MAURITIUS

**In the matter of:**

1. MOONESAMY **Applicant(s)**  
Subramanian

Vs

1. AFRINIC **Respondent(s)/**  
LIMITED **Garnishee(s)**  
2. BARRETT Alan  
Peter  
3. Dr. BOPE  
Christian Domilongo  
4. OJEDEJI  
Oluwaseum Samson  
5. ILUNGA Serge  
Kabwika  
6. MPISANE Vika  
William  
7. YOUSSEF  
Professor Habib

and

1. THE REGISTRAR **Co Respondent(s)**  
OF COMPANIES,

Cause Number : SC/COM/MOT/01411/2018

Applicant(s) Attorney

**Name :** MARDEMOOTOO MANOGARAN  
**Address :** 3rd Floor,  
Les Jamalacs Bldg  
Vieux Conseil Street  
Port-Louis

No barrister associated

Respondent(s)/ Garnishee(s) Contact Details:



1. AFRINIC  
LIMITED

having its registered  
office address at 11th  
Floor, Standard  
Chartered Tower,  
Cybercity, Ebène,  
Plaines Wilhems

2. BARRETT Alan  
Peter  
of [REDACTED]

[REDACTED], service  
to be effected at the  
registered office of  
AFRINIC Ltd,  
situated at 11th Floor,  
Standard Chartered  
Tower, Cybercity,  
Ebène;

, Plains Wilhems

3. Dr. BOPE  
Christian Domilongo  
of [REDACTED]

service to be effected  
at the registered office  
of AFRINIC Ltd,  
situated at 11th Floor,  
Standard Chartered  
Tower, Cybercity,  
Ebène;

, Plains Wilhems

4. OJEDEJI  
Oluwaseum Samson  
of [REDACTED]

service to be effected  
at the registered office  
of AFRINIC Ltd,  
situated at 11th Floor,  
Standard Chartered  
Tower, Cybercity,  
Ebène;

, Plains Wilhems

5. ILUNGA Serge  
Kabwika  
of [REDACTED]

[REDACTED], service to be  
effected at the  
registered office of  
AFRINIC Ltd,  
situated at 11th Floor,



Standard Chartered  
Tower, Cybercity,  
Ebène;

, Plaines Wilhems

6. MPISANE Vika  
William  
of

[REDACTED], service to be  
effected at the  
registered office of  
AFRINIC Ltd,  
situated at 11th Floor,  
Standard Chartered  
Tower, Cybercity,  
Ebène; and

, Plaines Wilhems

7. YOUSSEF  
Professor Habib  
of

[REDACTED], service to be  
effected at the  
registered office of  
AFRINIC Ltd,  
situated at 11th Floor,  
Standard Chartered  
Tower, Cybercity,  
Ebène.

, Plaines Wilhems

Co Respondent(s) Contact Details:

1. THE REGISTRAR  
OF COMPANIES,  
having its office  
address at One,  
Cathedral Square,  
Jules Koenig Street,  
Port Louis., Port Louis





**IN THE SUPREME COURT OF MAURITIUS**  
**(COMMERCIAL DIVISION)**  
**(Application under Section 118 of the Companies**  
**Act)**

In the matter of:

**Subramanian MOONESAMY, of** [REDACTED]

**APPLICANT**

V/S

- 1) **AFRINIC LIMITED**, having its registered office address at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 2) **Alan Peter BARRETT** of [REDACTED], service to be effected at the registered office of AFRINIC Ltd, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 3) **Dr. Christian Domilongo BOPE**, of [REDACTED], service to be effected at the registered office of AFRINIC Ltd, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 4) **Oluwaseum Samson OJEDEJI**, of [REDACTED], service to be effected at the registered office of AFRINIC Ltd, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 5) **Serge Kabwika ILUNGA**, of [REDACTED], service to be effected at the registered office of AFRINIC Ltd, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 6) **Vika William MPISANE** of [REDACTED], service to be effected at the registered office of AFRINIC Ltd, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène; and
- 7) **Professor Habib YOUSSEF**, of [REDACTED], service to be effected



at the registered office of AFRINIC Ltd, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène.

**RESPONDENTS**

In the presence of:

**THE REGISTRAR OF COMPANIES**, having its office address at One, Cathedral Square, Jules Koenig Street, Port Louis.

**CO-RESPONDENT**

**MOTION PAPER**

The Applicant moves for:

- a) An Order waiving the terms and requirements of Article 12.10 of the Respondent No.1's Constitution in relation to a quorum for the AGMM to be held in or about June 2019;
- b) An Order declaring that a minimum of 10 members (irrespective of their status as regional or non-regional directors, registered or resource members) duly constitutes a quorum for the purposes of the AGMM to be held in or about June 2019; and
- c) Any such other Order that this Court may deem fit and necessary in the present circumstances.

And this for the reasons fully set forth in the herewith attached affidavit.

Under all legal reservations  
Dated at Port Louis, this 7<sup>th</sup> day of December 2018

*Raduon*  
Repl.

**Manogaran Mardemootoo SA (J. Radhakissoo)**  
**Dentons Mauritius LLP**  
Of 3<sup>rd</sup> Floor, Les Jamalacs Building, Vieux Conseil St,  
Port Louis  
**Attorney for the Applicant instructing Counsel Mr. A.  
Radhakissoo**



**IN THE SUPREME COURT OF MAURITIUS**  
**(Before the Commercial Division)**  
**(Application under Section 118 of the Companies Act)**



In the matter of:

Subramanian MOONESAMY, of [REDACTED]

APPLICANT

V/S

- 1) **AFRINIC LIMITED**, having its registered office address at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 2) **Alan Peter BARRETT** of [REDACTED]
- 3) **Dr. Christian Domilongo BOPE**, of [REDACTED]
- 4) **Oluwaseum Samson OJEDEJI**, of [REDACTED]
- 5) **Serge Kabwika ILUNGA**, of [REDACTED]
- 6) **Vika William MPISANE** of [REDACTED]; and
- 7) **Professor Habib YOUSSEF**, of [REDACTED]

RESPONDENTS

In the presence of:

**THE REGISTRAR OF COMPANIES**, having its office address at One, Cathedral Square, Jules Koenig Street, Port Louis.

CO-RESPONDENT

I, **Subramanian Moonesamy**, a director of Afrinic Ltd, residing at [REDACTED] and holder of National Identity Card bearing No. [REDACTED]

**MAKE SOLEMN AFFIRMATION [REDACTED] AND SAY THAT:**

**A. The Parties**

1. I am a director of the Respondent No.1, AFRINIC Ltd, and I have duly been appointed as a member of the Board of Directors as from 1 July 2017.



2. The Respondent No.1 is a private company limited by guarantee that was incorporated in Mauritius on or about 3 February 2001. Its objects are, *inter alia*, 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.
3. The Respondents Nos. 2 to 9 are the other directors of the Respondent No.1 and together, we form the Board of Directors of the Respondent No.1.
4. The Co-Respondent is a public officer whose functions and duties are provided for in Part II of the Companies Act 2001.

**B. The Factual Background**

5. The Respondent No.1 operates within the framework of a constitution that has been drawn up in compliance with the statutory provisions set out in the Companies Act 2001.

A copy of said constitution is herewith attached and marked as **ANNEX 1**.

6. The relevant articles of the Constitution (*Annex 1 refers*) for the purposes of the present application are as follows;
  - (a) Article 9 of the Constitution, which provides for a Nomination Committee, that, *inter alia*, has the general responsibility for, and shall supervise the conduct of the polls by the Election Committee on election day;
  - (b) Article 10 of the Constitution, which establishes an Election Committee, which is entrusted with the duty to supervise the polls held on election day;
  - (c) Article 12 of the Constitution that sets out the rules governing the proceedings at the Annual General Members' Meetings (hereinafter referred to as the 'AGMM'); and
  - (d) Article 13.14 of the Constitution, which provides for the appointment of directors.
7. The Board of Directors is therefore elected during the AGMM, which is customarily held in or about May or June of each year.
8. The most recent elections for the appointment of three directors of the company were held on 10 May 2018 in Dakar. During these elections, none of the candidates who stood for election were elected inasmuch as;
  - (a) the Respondent No.1's election guidelines, specifically at Clause 9.2, provides for three options when voting for candidates running for a seat on the Board of Directors, namely, 'yes', 'no' or 'none of the above';



A copy of the Respondent No.1's specimen ballot paper is herewith attached and marked as ANNEX 2.

A copy of the Respondent No.1's election guidelines is herewith attached and marked as ANNEX 3.

A copy of the Respondent No.1's tally sheet is herewith attached and marked as ANNEX 4.

(b) The third option ('none of the above') polled more votes with the consequence that the vacancies were not filled as they should have been.

9. Further, one sitting director, namely [REDACTED] representing the North Africa region, resigned one day after the elections.
10. As a result of the above occurrences, the Respondent No.1 was effectively left with five directors on its Board, which only just allowed for the running of the said Board as the required quorum for a Board meeting is five.
11. To avoid the risk of being unable to hold Board meetings in the absence of one of the five directors, which would inevitably hamper the smooth running of the Board, the Board exercised its power under Article 13.14 of the Constitution and appointed, with effect from 18 July 2018, four directors in order to ensure that a quorum would reasonably be expected to be present for all subsequent Board meetings.
12. The Applicant avers that under the provisions of Article 13.14 of the Constitution, these four 'additional' directors would hold office until the next AGMM, which is scheduled for June 2019. However, they cannot constitute a quorum for the scheduled June 2019 AGMM as they are mere Board appointees, and not elected by the AGMM as per Article 12.10(ii)(a) of the Constitution.
13. The Applicant avers that one of the four directors appointed by the Board in terms of Article 13.14 of the Constitution namely, [REDACTED] has resigned from the Board as from 26 November 2018.

### **C. Impracticability**

14. Consequently, it is presently impracticable for the Board to call an AGMM, as it is unable to ensure compliance with the Articles 11.1 and 12.10 of its Constitution due to the status of the four 'additional' directors who do not represent any region.
15. The AGMM of the Respondent No.1, which requires a quorum of 10 directors of which at least four must represent a region, is held at various locations in Africa and, as a consequence, it takes an average of six months to plan, organise and hold the AGMM.
16. Given the uncertainty regarding the presence of a quorum at the said AGMM, it is impracticable for the Board to convene and hold an AGMM. This poses a threat to the smooth running of the Respondent No.1's affairs and results in the Board's incapacity to



discharge their fiduciary duties in the best interests of the company as provided for under its Constitution.

17. The Applicant avers that it is presently impracticable to hold an AGMM in terms of the Constitution of the Respondent. No.1.

18. The Applicant is therefore advised and verily believes that the intervention of the above Honourable Court is urgent and necessary for the Respondent No.1 to be able to convene and hold an AGMM in or about June 2019 to allow for the smooth running of its business and affairs.

**D. The Prayers**

19. In light of the above, the Applicant therefore moves the above Honourable Court for;

- a) An Order waiving the terms and requirements of Article 12.10 of the Respondent No.1's Constitution in relation to a quorum for the AGMM to be held in or about June 2019;
- b) An Order declaring that a minimum of 10 members (irrespective of their status as regional or non-regional directors, registered or resource members) duly constitutes a quorum for the purposes of the AGMM to be held in or about June 2019; and
- c) Any such other Order that this Court may deem fit and necessary in the present circumstances.

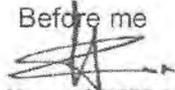
20. The Applicant prays accordingly.

Solemnly affirmed by the above-named Deponent ]  
At the Supreme Court, Port Louis ]  
This 7<sup>th</sup> of December 2018 ]



Drawn up by me

  
Repl. M. MARDEMOOTOO SA (J. Radhakisson)

Before me  
  
**Hemraj BEEDAH**  
Principal Court Officer  
Supreme Court

I hereby certify that this affidavit forms part of an application to be lodged before the above Honourable Court.

  
Repl. M. MARDEMOOTOO SA (J. Radhakisson)



AFRICAN NETWORK INFORMATION CENTRE  
(AFRINIC) LTD

CONSTITUTION

ANNEX 1

07/12/18  
[Signature]

Adopted December 2016



**AFRICNIC CONSTITUTION**

December 2016

1	INTERPRETATION .....	1
2	NAME .....	4
3	TYPE AND OBJECTS OF COMPANY .....	4
4	FUNDING .....	6
5	REGISTERED OFFICE .....	7
6	MEMBERSHIP .....	7
7	POWERS OF MEMBERS .....	8
8	TERMINATION OF MEMBERSHIP .....	10
9	THE NOMINATION COMMITTEE .....	12
10	ELECTION COMMITTEE .....	13
11	COMMUNITY MEETINGS .....	13
12	PROCEEDINGS AT ANNUAL GENERAL MEMBERS' MEETINGS .....	15
13	APPOINTMENT OF DIRECTORS .....	24
14	REMOVAL OF DIRECTORS .....	28
15	POWERS OF DIRECTORS .....	28
16	THE COUNCIL OF ELDERS .....	30
17	CHIEF EXECUTIVE OFFICER .....	30
18	REMUNERATION OF DIRECTORS .....	31
19	PROCEEDINGS OF DIRECTORS .....	31
20	SECRETARY .....	34
21	INDEMNITY AND INSURANCE .....	34
22	WINDING-UP .....	34
23	COMMON SEAL, AUTHENTICATION OF DOCUMENTS .....	35



**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

**Act:** The Companies Act 2001 of Mauritius, as amended from time to time.

**Annual General Members' Meeting:** The annual meeting of the members of the company required to be held under section 115 of the Companies Act 2001.

**Associate Member:** Any individual person, corporate body of the public sector including governmental, and intergovernmental organisations, non-governmental organisations as well as those of private sector entities who do not use Assigned Number resource under the Registration Service Agreement (RSA) but who have manifested a substantial interest in the number resources management as well as in the mission of AFRINIC to become its member.

**Auditors:** The auditors appointed by the Board for the time being of the Company.

**Board:** The board of directors of the Company for the time being.

**Bylaws:** This Constitution, as adopted and amended from time to time in accordance with the Act.

**Chief Executive Officer:** 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.

**Company:** AFRINIC Ltd, a company incorporated in the Republic of Mauritius.



**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.

**Constitution:** This constitution, also referred to as the Bylaws, as adopted and amended from time to time in accordance with the Act.

**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.

**Director:** A person elected to the office of director at an annual Members' meeting and the Chief Executive Officer in an ex-officio capacity as the context indicates.

**Election Committee:** A committee set up under Article 10 of this Constitution, comprising of such staff of AFRINIC, designated by the Chief Executive Officer.

**End-Site:** Any entity, corporate or individual that receive services (Number Resources assignments) directly from AFRINIC for exclusive use on its own service infrastructure.

**E-voting:** An election system that allows a voter to record his or her secure and secret ballot electronically from any location.

**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.

**Internet community:** Any person or corporate body living or operating in AFRINIC service region and interested in the Internet Number resource Management.

**Local Internet Registry (LIR):** any Network Operator that provides Internet services to distinct end-users and end-sites.

**Member:** Registered Member, Resource Member and Associate Member.

**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.

**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.

**Person:** Any individual, company, body corporate, registered organisation, unincorporated association, governmental organisation and intergovernmental organisations or non-governmental organisation.

**Policy Development Process:** A bottom-up, open and transparent process, approved by the Internet Community wherein all stakeholders may participate in the creation of policies which would ensure that the Internet Number Resources are distributed and managed in a responsible and fair manner.

**Registered Member:** Any Director upon assumption of office and who is a member within the meaning of the Act.

**Registration Service Agreement:** A legally binding agreement between AFRINIC and such legal entities which use or shall use Internet Number Resources managed and administered by AFRINIC.

**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.



(ix) 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:

- (i) membership fees from members;
- (ii) setup fees for bulk registration services;
- (iii) setup fees for individual address space assignments;
- (iv) maintenance fees for non-contiguous, non ISP address space;
- (v) registration fees for individual address space transfers;
- (vi) setup fees for autonomous system number ("ASN") assignments;
- (vii) grants and/or voluntary donations; and
- (viii) such other sources as may be deemed appropriate from time to time by the Board.

**Review of fees:**

The fees mentioned in Article 4.1 above shall be subject to review from time to time by the Board.

- (ii) Before finalising any changes in fees, the Board shall consult the Members and the community, and allow at least 60 days for comments.
- (iii) After the Board finalises any changes in fees, the new fees shall take effect after a notification period, to Member and the community, of not less than 60 days.

**5 REGISTERED OFFICE**

5.1 The registered office shall be at 11<sup>th</sup> Floor, Rafites Tower, Cybercity, Ebène, Mauritius.

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.

**6 MEMBERSHIP**

6.1 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.

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

6.3 An individual who shall be elected as Director in accordance with Article 13 below. The Chief Executive Officer shall automatically also be appointed as a Registered Member, provided that the said individual shall sign such forms as may be prescribed by the laws of Mauritius and to contribute Rs. 500 (five hundred Mauritian rupees only) in the event of the Company being wound up according to Article 22.

6.4 **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:

- (i) justified its need for the right to use Internet Number Resources to AFRINIC;
- (ii) signed AFRINIC's Registration Service Agreement; and



- (iii) paid the relevant setup and membership fees related to Internet Number Resources allocated/assigned to it by AFRINIC Registration Service.

## 7 POWERS OF MEMBERS

7.1 Each Registered and Resource 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 Meetings.

7.2 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.

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 Meetings as Observer.

7.5 Associate Members shall have the right

- (i) to receive notice for members' meeting called by AFRINIC;
- (ii) to attend as Observer all members' meetings called by AFRINIC;
- (iii) to take advantage of services provided by AFRINIC as regards training, consultancy and technical expertise; and

- (iv) 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 addition to the rights conferred by Articles 7.1 and 7.2, have the right to:

- (i) consider and adopt by Ordinary Resolution the financial statements of the Company;
- (ii) receive any auditor's report;
- (iii) consider the annual report;
- (iv) determine, by Ordinary Resolution, the general policies for fulfilling the objects of the Company;
- (v) approve, in accordance with Section 130 of the Act, a major transaction;
- (vi) consider and approve by Special Resolution, if appropriate, proposals for the revocation, amendment or replacement of this Constitution;
- (vii) appoint by Ordinary 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;
- (viii) request the Board, by way of a notice signed by not less than five (5) per cent of the Registered Members and Resource Members, to call a Special General Members' Meeting to vote on one or more resolutions; and
- (ix) resolve, by Special Resolution, to put the Company into liquidation.

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.

**8 TERMINATION OF MEMBERSHIP**

- 8.1 The membership of a Registered Member shall terminate upon:
- (i) the Registered Member absented himself from two (2) consecutive Board meetings over a period of 12 months without showing good cause;
  - (ii) absented himself from four (4) non-consecutive Board meetings over a period of 12 months without showing good cause;
  - (iii) the Board, acting reasonably and in good faith, determining by 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;
  - (iv) 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:
- (i) 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;
  - (ii) 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;
  - (iii) 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;
  - (iv) 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



- (v) 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:
- (i) 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;
  - (ii) notice to this effect is given to the Board by the Member;
  - (iii) 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;
  - (iv) 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;
  - (v) 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
  - (vi) 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.

9.2 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:

- (i) The NomCom shall:
  - a) use its best effort towards ensuring that a satisfactory number of individuals from the African Internet community stand as candidate for the election of the directors of AFRINIC; and
  - b) have general responsibility for, and shall supervise the conduct of the polls by the election Committee on election day.
- (ii) In the discharge of its function under Article 9(i) above, the NomCom:
  - a) shall call for candidates for elections held by AFRINIC;
  - b) prescribe criteria and qualifications for eligibility to stand as candidate for elections held by AFRINIC;
  - c) may interview candidates prior to finalising the list of candidature; and
  - d) Shall finalise the list of candidates for any election held by AFRINIC.

**10 ELECTION COMMITTEE**

There shall be an election committee 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:

- (i) have general responsibility for, and shall handle all the pre-election process for all elections held by AFRINIC;
- (ii) have such functions relating to these elections as may be assigned to it by the Chief Executive Officer;
- (iii) liaise with the 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, the members present shall collectively and by consensus resolve it. Such resolution shall for the future AFRINIC elections be applied as a precedent and become an integral part of the election guidelines.

**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 special meeting of the members.

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

- (i) not more than once in each year; not later than six (6) months after the balance sheet date of the Company; and
- (iii) not later than fifteen (15) months after the previous Annual General Member 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:

- (i) members (Registered, Resources and Associate);
- (ii) anyone interested in 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 11.2 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.

11.5 Endorsement of policy adopted by the Board:

- (i) 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.
- (ii) 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.

A Special General Member Meeting:

- (i) may be called at any time by the Board;
- (ii) shall be called by the Board on the written request of members in accordance with Article 7.6(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 Member Meeting.

## 12 PROCEEDINGS AT ANNUAL GENERAL MEMBERS' MEETINGS

### 12.1 Chairperson:

- (i) Where the Directors have elected a chairperson of the Board, and the Chairperson of the Board is present at an Annual General Member Meeting called in terms of Article 11.1, he/she shall chair the Annual General Member Meeting.
- (ii) If, at any Annual General Members' Meeting called in terms of Article 11.1, the Chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the Annual General Members' Meeting, the Vice-Chairperson will chair the meeting.
- (iii) Where no Chairperson of the Board has been elected or if, at any Annual General Member Meeting called in terms of Article 11.1, the chairperson and the Vice-Chairperson of the Board are not present within 15 minutes of the time appointed for the commencement of the Annual General Member Meeting, the Directors present shall elect one of their member to be the Chairperson of the Annual General Members' Meeting.
- (iv) The ruling of the 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 Chairperson may be entertained.



**12.2 Notice of Annual General Members' Meetings**

- (i) Written notice of the time, date and place of a 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 14 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;

(ii) The notice to be sent pursuant to Article 11 shall state:

- a) 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;
- b) 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;
- c) any policy issues which the Board considers should be discussed at the Annual General Members' Meeting;
- d) 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
- e) the text of any Special Resolution to be submitted to the Annual General Member Meeting.

12.3 Any irregularity in a notice of an Annual General Member Meeting shall be waived where all the members entitled to attend and vote at the Annual General Members' Meeting attend the said Meeting without protest as to the irregularity, or where all members agree to the waiver.

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 Meeting.

12.5 The chairperson may, or where directed by the Annual General Members' Meeting, adjourn the Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Annual General Member 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, notice of the adjourned General Meeting shall be given as in the case of an original 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 Member Meeting to Associate members.

12.7 Associate members may attend the Annual General Members' Meetings in an Observer capacity.

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

- (i) An Annual General Members' Meeting called under Article 11.1 may be held either
    - a) by the members, including a number of members who constitute a quorum, being assembled together at the place, date, and time appointed for the Meeting; or
    - b) by means of audio, or audio and visual, communication by which all members participating and constituting a quorum can simultaneously hear each other throughout the 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 in 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

- (i) Where a quorum is not present, no business shall transacted at an Annual General Members' Meeting called under Article 11.1 of this Constitution.
- (ii) The quorum for an Annual General Member meeting shall be composed of minimum of ten (10) members in person comprising:
  - a) Four (4) Directors elected to represent a region;
  - b) One (1) Director elected on a non-regional criterion; and
  - c) Five (5) Resource Members.

(iii) Where a quorum is not present within 30 minutes after the time appointed for the Annual General Members' Meeting:

- a) in the case of a Annual General Member Meeting called under section 118(1)(b) of the Act, the Meeting shall be disbanded;
- b) in the case of an Annual Member 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;
- c) and at the adjourned Annual General Members' Meeting, the quorum shall be ten (10) members present, subject to Article 12.10(ii) in person or by proxy.

## 12.11 Voting

- (i) Where an Annual General Members' Meeting is held under Article 11.6 (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 Meeting:

- a) voting by voice;
  - b) voting by show of hands;
  - c) voting by paper ballot;
  - d) voting by electronic system (e-voting)
- (ii) Where an Annual General Members' Meeting is held under Article 11.6(ii) above, unless a poll is demanded, voting at the Meeting shall be by the members signifying individually their assent or dissent by voice.
- (iii) 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.
- (iv) At an Annual General Members' Meeting called under Article 11.1, a poll may be demanded by any Registered Member or any Resource Member or the chairperson of the Meeting.
- (v) A poll may be demanded either before or after the vote is taken on a resolution.
- (vi) Where a poll is taken, each Member shall have one vote on a resolution on which that Member is entitled to vote.
- (vii) The chairperson of an Annual General Member Meeting called under Article 11.1 shall be entitled to a casting vote.
- (viii) The instrument appointing a proxy to vote at an Annual General Member 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 proxy for a Registered Member or Resource Member shall have the same effect as a demand by the Registered Member or Resource Member.



- (ix) The demand for a poll may be withdrawn.
- (x) Where a poll is duly demanded, it shall, subject to Article 11.7 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.
- (xi) 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.
- (xii) 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.

12.12 Proxies

- (i) A Member may exercise the right to vote either by e-voting, by being present in person or by proxy;
- (ii) A proxy for a Member may attend and be heard at an Annual General Members' Meeting as if the proxy were the Member;
- (iii) A proxy shall be appointed by 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;
- (iv) 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 notarial certified copy shall also be produced;
- (v) A proxy form shall be sent with each notice sent to a Member;



- (vi) 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;
- (vii) 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 .....

- (viii) No member entitled to vote during an election held by the Company shall carry more than five (5) proxies during the said election; and
- (ix) No Candidate to the election of Director of the Company shall act as proxy for any member during such an election.

12.13 Minutes

- (i) The Board shall ensure that minutes are kept for all proceedings at all Annual General Members' Meetings.
- (ii) Minutes that have been approved by chairperson of the Annual General Members' Meeting and verified by the Board are *prima facie* evidence of the proceedings.
- (iii) 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.

12.14 Member proposals

(i) 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.

(ii) 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 Member Meeting called under Article 11.1 of this Constitution at which the Member is entitled to vote.

(iii) 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.

(iv) 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 Member Meeting is required to be given by the Board, the Board shall, at the expense of the 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.

(v) 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 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.

(vi) 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.

(vii) 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.

(viii) 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.

(ix) 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 members. Corporations may act by representative.

(x) 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

- (i) Unless otherwise expressly provided in this Constitution or otherwise mandatory as per the provisions of the Act, an Annual General Member 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 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 13.14 of this Constitution;
- (iv) the untimely death of any Director;
- (v) the filing of a casual vacancy in terms of Article 13.14.

13.2 The election of the Directors of the company shall be carried out in line with the Election process approved by the Board.

13.3 Written notice of the time, date and place of the meeting of members shall be sent to every member and to every Director, the secretary and the auditor of the Company not less than 14 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.

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

- (i) Six Directors elected by the Annual General Member Meeting called under Article 11.1 of this Constitution, upon the recommendation of the NomCom, acting in compliance with the election guidelines, to represent each of the sub-regions listed in Article 13.5 (Seats 1 to 6);

- (ii) Two Directors elected by the Annual General Member 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

(iii) 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:

- (i) Northern Africa (seat 1);
- (ii) Western Africa (seat 2);
- (iii) Indian Ocean (seat 3);
- (iv) Central Africa (seat 4);
- (v) Southern Africa (seat 5); and
- (vi) Eastern Africa (seat 6).

Each Director elected under Articles 13.4(i) and 13.4(ii) of this Constitution shall hold office for a term of three years, which term of office shall expire on the date of the Annual General Members' Meeting held on or around the third anniversary of the date of appointment of such Elected Director. Subject to Article 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(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:

- (i) Election for Directors representing Northern Africa and Western Africa;
- (ii) Election for Directors representing the Indian Ocean and Central Africa; and
- (iii) Election for Directors representing Southern Africa and Eastern Africa.



## 13.7 Election mechanism

- (i) 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 on the date of each Annual General Members' Meeting.
- a) Six directors representing each of the regions listed in Article 13.5 shall be elected according to Article 13.6.
- b) 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 Indian Ocean and Central (seats 3 and 4) and shall hold office according to the terms of Article 13.10 of the Constitution.



- (ii) The NomCom shall, in terms of the existing election process, take all the relevant actions for 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:

- (i) is under 18 years of age;
- (ii) is an undischarged bankrupt;
- (iii) 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;

(iv) 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;

(v) is not a natural person; or

(vi) has been adjudged to have been of unsound mind.

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

(i) 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

(ii) 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:

- (i) previous Board or organisational leadership experience;
- (ii) skills in business management and leadership;
- (iii) fundraising for not-for-profit organisations experience;
- (iv) network operations and Internet services experience; and
- (v) international Business development experience.

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

13.14 The Directors shall 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.

**14 REMOVAL OF DIRECTORS**

14.1 A Director shall hold office until:

- (i) his term of office expires, without prejudice to Article 13;
- (ii) 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;
- (iii) he/she is removed by the affirmative vote of two-thirds of all other Directors;
- (iv) he/she otherwise ceases to be a Director pursuant to Section 139 of the Act; or
- (v) 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:
  - (i) for directing, and
  - (ii) 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:
  - (i) determine the guidelines for the allocation of address space to members in line with the member driven Policy Development Process;

- (ii) consider broad internet policy issues in order to ensure that the policies and strategies of the Company fully respond to the changing internet environment;
- (iii) determine a financial budget for the activities of the Company for a given period;
- (iv) establish a ceiling for expenditures for a given period and from time to time to vary such ceiling as they deem fit;
- (v) fill any casual vacancy in the office of the auditor of the Company;
- (vi) provide any general directives to the Chief Executive Officer regarding Executive staffing of the Company;
- (vii) determine through a dedicated committee, the conditions of employment of the employees of the Company who are employed at an Executive level;
- (viii) 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;
- (ix) to appoint or remove the secretary of the Company and to determine the remuneration payable to such secretary; and
- (x) 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**

- (i) A Director of the company shall, where he/she has a potential or actual conflict of interest in any matter brought before the Board, disclose such potential or actual conflict to the Board.

- (ii) The said Director shall recuse himself/herself from voting on any such matter before the Board where such a conflict exists or may exist.
- (iii) The remaining members of the Board may decide that said Director should be excluded from discussion of such matter where a conflict exist or may exist.

No person may hold more than one of the following positions within the company:

- (i) Chairperson of the Board.
- (ii) Vice Chairperson of the Board.
- (iv) Chief Executive Officer.
- (v) Chief Financial Officer.



**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 and shall provide help and assistance to the Chair or the entire Board.

**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.

- 17.4 The Chief Executive Officer:

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

**18 REMUNERATION OF DIRECTORS**

- 18.1 Except for the Chief Executive Officer, a Director shall not be an employee of the 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 Deputy Chairperson – The Directors shall elect from one of their member a Chairperson and a deputy or vice Chairperson.

- (i) The chairperson or, failing him, the deputy chairperson, shall preside at all meetings of the Directors, but if at any meeting the chairperson and 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 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.

- (i) 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.

- (ii) 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:

- (i) 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;
- (ii) 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

- (iii) 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.

- (i) 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.

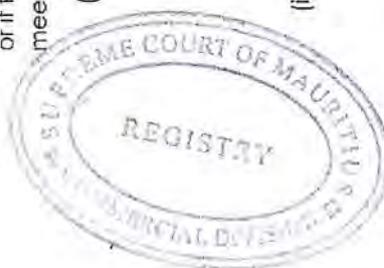
**19.7 Voting** - Every Director shall have one vote. The chairperson shall not have a casting vote.

**19.8** A resolution of the Board is passed if a majority of the votes cast on it, by eligible Board 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.

(i) 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.

(ii) 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.

**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 before the Registered Member ceases to be a Registered Member, and of the costs and expenses of winding-up.

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.

**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,
- (i) with the concurrence of the Chairperson (elected in compliance with Section 158 of the Act); and
  - (ii) 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.



## AFRINIC Board Election 2016



The AFRINIC Board is presently composed of eight (8) elected Directors plus one member appointed by the Board (the Chief Executive Officer). Each year, election of Directors of the company shall be carried out in line with Election Process approved by the Board. During the AGMM scheduled for 09 June 2016, Seat 1 (Northern Africa), Seat 2 (Western Africa) and Seat 7 (Region Independent) will be up for election.

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

*(i) Northern Africa (seat 1); (ii) Western Africa (seat 2); (iii) Indian Ocean (seat 3); (iv) Central Africa (seat 4); (v) Southern Africa (seat 5) and (vi) Eastern Africa (seat 6)*

*Each Director elected under Articles 13.4 (i) and 13.4 (ii) of this Constitution shall hold office for a term of three years, which term of office shall expire on the date of the Annual General Members' Meeting held on or around the third anniversary of the date of appointment of such Elected Director. Subject to Article 13.6 such Director shall be eligible for re-election on the expiry of his term of office.*

*Article 13.7 (i) (b) Two Region – Independent Directors representing seats 7 and 8 shall be elected during the same elections as for Northern and Western (Seats 1 & 2) and Indian Ocean and Central (Seats 3 & 4) and shall hold office according to the terms of Article 13.10 of the constitution.*

**Who can vote:** Active members or their valid proxy. Candidates for open positions have a vote if they are physically present at the AGMM. Member voting shall be carried out electronically or through paper ballots.

**Voting:**

**Ballot:** The ballot will be provided to valid members or their proxies that will have registered at the registration site. A ballot will be valid only if it has an AFRINIC seal of the back. Each member will identify a candidate choice for each region by marking in front of the candidate's name. **There should be no more than 1 choice member and per sub-region. Ballots with more than one choice will be considered invalid.**

**Proxies:** According to Article 12.12, A Member may exercise the right to vote either by being present in person or proxy. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent authorised in writing or in the case of a corporation under the hand of an officer or of an agent duly authorised. With the introduction of the e-voting system, such electronically generated proxy document approved by the Board (Article 12.12 (vi)).

Seat 1: Northern Africa		Seat 2: Western Africa	
<input type="checkbox"/>	Haitham El Nakhal	<input type="checkbox"/>	Alain Patrick Aina
<input type="checkbox"/>	Moez Chakchouk	<input type="checkbox"/>	Sunday Adekunle Folayan
<input type="checkbox"/>	None of the above	<input type="checkbox"/>	None of the above
Seat 7: Region Independent			
<input type="checkbox"/>	Aminata Amadou Garba		
<input type="checkbox"/>	Serge Ilunga Kabwika		
<input type="checkbox"/>	Seun Samson Ojedeji		
<input type="checkbox"/>	None of the above		

AFRINIC AGMM  
BOTSWANA  
2016



Last Updated on Tuesday, 10 April 2018 14:36

ANNEX 2  
JR A  
b  
07/12  
18

## 1. Introduction

According to Section 13 of the AFRINIC by-laws , three Board seats are open for elections every year. Elections take place during the Annual General Members Meeting (AGMM) that is normally held in the months of May or June. Board seats are numbered from 1 to 9, Seats 1-8 are elected by the community.

The election is conducted according to the following sequence:

- Election for seats 1, 2 and 7 (North, West and one Independent).
- Election for seats 3, 4 and 8 (Indian Ocean, Central and One Independent)
- Election for seats 5 and 6 (South and East)

Logistics of running all elections will be managed by the Elections Committee (as defined in Section 10 of the by-laws ). The Chair of the NomCom shall at the same time act as the Chair of the Elections Committee..

## 2. The Election Process

### 2.1 Eligible Candidates

No person shall be appointed or hold office as a Director if he/she is a person that:

- is under 18 years of age;
- is an undischarged bankrupt;
- 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 ;
- 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 ;
- is not a natural person; or
- has been adjudged to have been of unsound mind.

### 2.2 Eligible Voters

Only organisations and persons fulfilling the following criteria are able to vote:

- Any AFRINIC Resource member in good standing. (Good Standing in this context refers to a member that has signed the AFRINIC Registration Service Agreement and who has no unsettled financial debt with AFRINIC.)
- All Registered Members.
- Appointed Proxies duly approved by the CEO at least 48 hours prior to the Election Day and transmitted to the Chair of the Elections Committee.
- The following voting criteria apply to all candidates:
- A candidate cannot carry a proxy (Section 12.12(ix) of Bylaws ).
- A candidate can carry the votes of the Resources Members they formally represent, having been registered as one of the organisation's contact persons for at least 12



months before the election date or since that organisation's commencement of membership if less than 12 months old. MyAFRINIC will be the source of membership status for all eligible voters.

- Candidate without a valid membership status can not vote.

### 2.3 Proxies

An organisation that is not able to send a representative to attend the face-to-face meeting can give its voting rights to a proxy (per Sections 12.11 and 12.12 of the AFRINIC bylaws ) by filling the proxy form available from the member's profile within the MyAFRINIC portal . The form must be downloaded, signed and a copy must be sent by e-mail to the AFRINIC CEO not later than 48 hours before the election date.

An organisation that is not able to send a representative to attend the face-to-face meeting can give its voting rights to a proxy (per Sections 12.11 and 12.12 of the AFRINIC bylaws ) by filling the proxy form available from the member's profile within the MyAFRINIC portal . The form must be downloaded, signed and a copy must be sent by e-mail to the AFRINIC CEO not later than 48 hours before the election date.

- o No member entitled to vote shall carry more than 5 proxies during the said election (Ref. section 12.12 (iiiv) of the by-laws).
- o No Candidate to the election of Director of the Company shall act as proxy for any member during such an election (Ref. section 12.12(ix) of the by-laws).
- o A proxy instrument must be printed on the official and actual letterhead of the Member organization.
- o The paper document embodying the proxy instrument must be duly signed by:
  - i. Either a registered administrative contact of the Member. (For the avoidance of doubt, AFRINIC's database shall be used for counter verification), or:
  - ii. A director of the company, on whose letterhead the paper proxy document has been printed, and whose name is listed on the said letterhead.
- o The affixing of Company seals to the paper proxy instruments is not mandatory.
- o Members who are natural person and who do not have a letterhead are exempted from the obligation of printing the proxy instrument on a letterhead.

### 3. Election Timeline

Days to Election	Activity Date	Activity
------------------	---------------	----------

#### NOMCOM APPOINTMENT TIMELINE

111	19-Jan-18	Publication and Announcement of the Call for Volunteers
96	03-Feb-18	Closure of the Call for Volunteers; Board review of received volunteers



93	06-Feb-18	Publication and Announcement of Selected Volunteers
91	08-Feb-18	Election of NomCom Chair
91	08-Feb-18	Announcement of Elected NomCom Chair

### BOARD NOMINATION & ELECTION TIMELINE

86	13-Feb-18	Open Candidate Nomination Period
56	15-Mar-18	Close Candidate Nomination Period
54	17-Mar-18	Send Received Nominations to Board for Approval
52	19-Mar-18	Board Review & Transmittance of Approved Nominations to NomCOM
50	21-Mar-18	Start Review period of (Board Approved) Nominations
40	31-Mar-18	End Review period of nominations
39	01-Apr-18	Prepare and send final candidate slate to Board for "Review" and "Non-binding advice"
37	03-Apr-18	Board-reviewed slate sent back to NomCom
30	10-Apr-18	Announcement of Final candidate slate & opening of public comments period
13	27-Apr-18	Open e-voting and proxy registration
1	09-May-18	Close of proxy registration & appointment
0	10-May-18	Election day, Close of electronic voting

#### 4. How to Nominate

Nominations will be accepted from authorized and registered contact persons of AFRINIC member organizations in good standing.

Self-nominations and nominations by those who are not registered contacts of AFRINIC member organizations are also allowed but with the condition that the nomination must be formally backed by at least two authorized and registered contact persons of an AFRINIC member organization in good standing.



## 5. Verifying Nominations

AFRINIC Staff liaison to the NomCom will verify that all nominations were submitted within the given period and include all the required information.

The Chair of the NomCom should notify nominees and the nominators of the receipt of the nomination. Nominees will at the same time be asked for confirmation of their intent to contest for the seat. Ineligible nominations will be rejected and the nominators and nominees notified separately.

## 6. Finalising the Slate of Candidates

The NomCom will review:

- a) All completed nominations to verify that the nomination process was followed and;
- b) Nomination forms to determine that all nominees meet the general criteria as defined in section 13.12 of the by-laws (as follows):

- Previous Board or organisational leadership and/or fiduciary experience
- Skills in business management and leadership
- Fund raising for not-for-profit organisations experience
- Network Operations and Internet Services experience
- International Business development Experience.

The NomCom may decide to conduct interviews or further background checks on candidates. The Nomcom may impose additional requirements over and above those mentioned on the process page, and these additional requirements are documented in the call for nominations. The Chair of the NomCom will decide the means to be used for such further evaluation, in which case, a report must be provided to the Staff and the NomCom. The Chairman of the NomCom will then forward the slate of candidates to AFRINIC Staff composing the Election Committee for publication online.

## 7. Notification of Candidates

The NomCom Chair will send a final slate of candidates via e-mail to:

- [announce@afritic.net](mailto:announce@afritic.net)
- [rpd@afritic.net](mailto:rpd@afritic.net)

The CEO will forward the final slate of candidates via e-mail to all members' contacts separately.

The candidate list and biographical information is simultaneously posted on the Elections section of the AFRINIC website. The website will provide an online channel for any one to comment on (and direct questions to) the candidates during the period prior to the opening of voting (including e-voting).

All candidates will be given the opportunity to present themselves to the general membership in a brief speech during the AGM prior to the paper voting. This presentation can be in person, through the AFRINIC meeting remote participation system or by a pre-recorded video. It is highly advisable that candidates physically attend the AFRINIC AGMM where the election will take place.



## 8. Withdrawal of Nomination

A candidate may withdraw his/her nomination by notifying the NomCom Chair at least 7 days before the start of the electronic voting period. The withdrawal notification must be submitted by either the nominator or the candidate. In any case, both the nominee and the candidate must be informed to verify and confirm the withdrawal before it can be formally accepted.

## 9. Voting

Votes can be cast electronically or by a paper ballot.

### 9.1 Electronic Voting

The electronic voting platform is integrated into the **MyAfrinIC portal**, and will be accessible only to members in good standing. The following will apply to e-voting:

- Starts at least 7 days before AGMM date.
- Ends at 08:00 UTC the day of the AGMM.
- "Trustees" that are setup to unlock and tally the e-vote system shall consist of the AFRINIC CEO, NomCom Chair, a representative from the other RIRs (or the NRO) and the AFRINIC Legal Counsel.
- E-votes are tallied using the e-voting tallying system. Results are kept in a sealed envelope signed by all the trustees and opened at the end of the tally of the paper ballot. The total of the two results will constitute the final results.

### 9.2 Paper Ballot on Election Day

The voting conducted during the Annual General Members' Meeting is carried out via paper ballots containing a list of candidate names and a ballot number. Prior to the vote, all members present or participants holding a proxy will be requested to register and validate their membership status.

- Voters should only vote for one candidate per category/region. Each mark on a ballot paper represents one vote. A ballot with more than one mark per category/region will be considered spoilt, and not be counted.
- The ballot paper should provide voters with the option to not vote for any candidate (a.k.a. "None of the Above").
- This will be a secret ballot election. An inclusion of any personal data on the ballot paper will invalidate the vote and will be counted as spoilt.
- Elections will be closed as soon as the last member or proxy present in the meeting room casts his/her vote. Candidates with the highest number of votes in each category will be declared winners.
- In the event of a tie for an open position, voting for that position will be repeated (Only by paper ballot) the same day until there is a winner.
- All open positions shall be subject to an election process even if there is only one candidate. In that event, if the option [none of the above] got more votes than the only candidate, then the seat shall be considered vacant and the Board will be requested to apply provisions of the Bylaws to temporarily fill the vacant seat.



### 9.3 Vote Counting and Announcement of Election Results

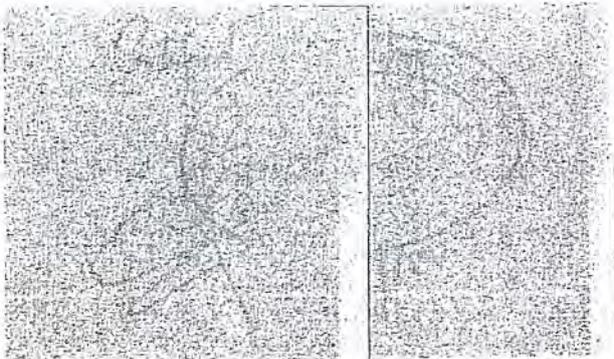
A representative of the NomCom, and members of the Election Committee present during the AGMM, in addition to not more than four (4) volunteers from the other RIRs present, shall count the paper votes to determine the winners.

The Chair of the NomCom will announce the election results after the full vote count including the e-voting results with the vote detail for only the elected candidates.

The CEO shall send the final results by e-mail not more than 48 hours after the election to:

- [announce@afriNIC.net](mailto:announce@afriNIC.net)
- [members-discuss@afriNIC.net](mailto:members-discuss@afriNIC.net)
- [rpd@afriNIC.net](mailto:rpd@afriNIC.net)

The election results shall be simultaneously published on the AFRINIC website.



BOARD ELECTION 2018  
TOTAL Votes TALLY SHEET

SEAT 2 – WESTERN AFRICA:

	ON-SITE VOTES:	ON-LINE VOTES:	TOTAL VOTES:
Dr Adewale Adedokun	5	38	43
Dr Ousmane Moussa Tessa	8	48	56
None of the above	2	76	78
<b>TOTAL</b>	15	162	177

SEAT 5 – SOUTHERN AFRICA:

	ON-SITE VOTES:	ON-LINE VOTES:	TOTAL VOTES:
Lucky Masilela	10	69	79
None of the above	4	93	97
<b>TOTAL</b>	14	162	176

SEAT 6 – EASTERN AFRICA

	ON-SITE VOTES:	ON-LINE VOTES:	TOTAL VOTES:
Abibu Rashid Ntshigiyi	12	68	80
None of the above	3	94	97
<b>TOTAL</b>	15	162	177



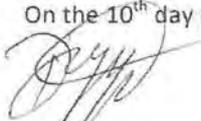
SC/COM/MOT/01411/2018

RETURN :-

The foregoing Notice of Motion together with the Motion Paper and Affidavit thereto attached was duly served by me, the undersigned Court Usher upon:

1. **The Registrar of Companies**, by leaving a true and certified copy thereof with [REDACTED], a **Management Support Officer** found at her place of work at Registry of the said company situate at One Cathedral Square, Port Louis.

On the 10<sup>th</sup> day of December, 2018



D. GYA.

Court Usher

Supreme Court

Fees:Rs150/-



V.R.LUCHMAYA

ATTORNEY

205 Sterling Tower, La Poudriere Street, Port Louis

Tel :- 2456202

email [rao.luchmaya@intnet.mu](mailto:rao.luchmaya@intnet.mu)

---

19.12.2018

The Honourable Judge

Commercial Division

Supreme Court

Your Lordship

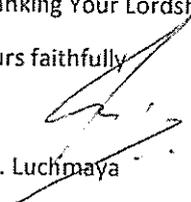
Re :- SC/COM/MOT/01411/2018

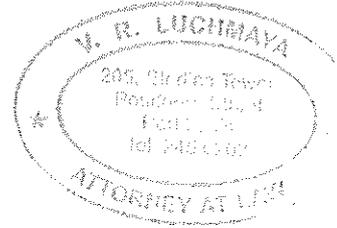
I refer to the above matter wherein I appear for the respondents Nos. 1 to 7.

My clients have no objection to the proposed amendments to the above proceedings and to the prayer sought for by the Applicant in the present application.

Thanking Your Lordship

Yours faithfully

  
V.R. Luchmaya





This 20<sup>th</sup> day of December 2018

Her Ladyship  
The Honourable Judge R.Mungly-Gulbul  
Commercial Division  
Supreme Court of Mauritius  
Port-Louis.

Your Ladyship,

**RE: SUBRAMANIAN MOONEESAMY VS AFRINIC LTD & ORS (SC/COM/MOT/01411/2018)**

I appear for the Applicant in the above matter.

I wish to inform Your Ladyship that the Applicant intends to file a new affidavit as some minor changes have been made and a copy of same has already been communicated to all the Respondents.

I have taken cognizance of the letter filed by my friend R Luchmaya, who appears for all the Respondents, whereby the latter stated that the Respondents have no objection thereto.

I therefore be most grateful if Your Ladyship could kindly grant me leave to upload the new affidavit in relation to the above matter. A copy of same is herewith attached.

Thanking Your Ladyship in anticipation.

Yours respectfully,

M.Mardemootoo SA

**IN THE SUPREME COURT OF MAURITIUS**  
**(Before the Commercial Division)**  
**(Application under Section 118 of the Companies Act)**



In the matter of:

Subramanian MOONESAMY, of [REDACTED] **APPLICANT**

V/S

- 1) **AFRINIC LTD**, having its registered office address at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 2) **Alan Peter BARRETT**, of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 3) **Dr. Christian Domilongo BOPE**, of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène
- 4) **Oluwaseum Samson OJEDEJI**, of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène
- 5) **Serge Kabwika ILUNGA**, of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène
- 6) **Vika William MPISANE** of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène; and



- 7) Professor Habib YOUSSEF, of [REDACTED], service to be effected at the registered office of AFRINIC Ltd, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène.

RESPONDENTS

In the presence of:

**THE REGISTRAR OF COMPANIES**, having its office address at One, Cathedral Square, Jules Koenig Street, Port Louis.

CO-RESPONDENT

I, Subramanian Moonesamy, a director of Afrinic Ltd, residing at [REDACTED] and holder of National Identity Card bearing No. [REDACTED]

MAKE SOLEMN AFFIRMATION [REDACTED] AND SAY THAT:

A. The Parties

1. I am a director of the Respondent No.1, AFRINIC Ltd, and I have duly been appointed as member of the Board of Directors as from 1 July 2017.
2. The Respondent No.1 is a private company limited by guarantee that was incorporated in Mauritius on or about **3 February 2004**. Its objects are, *inter alia*, 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.
3. The Respondents Nos. 2 to 7 are the other directors of the Respondent No.1 and together, we form the Board of Directors of the Respondent No.1.



4. The Co-Respondent is a public officer whose functions and duties are provided for in PART II of the Companies Act 2001.

**B. The Factual Background**

5. The Respondent No.1 operates within the framework of a constitution that has been drawn up in compliance with the statutory provisions set out in the Companies Act 2001.

A copy of said constitution is herewith attached and marked as **ANNEX 1**.

6. The relevant articles of the Constitution (*Annex 1 refers*) for the purposes of the present application are as follows;

(a) Article 9 of the Constitution, which provides for a Nomination Committee, that, *inter alia*, has the general responsibility for, and shall supervise the conduct of the polls by the Election Committee on election day;

(b) Article 10 of the Constitution, which establishes an Election Committee, which is entrusted with the duty to supervise the polls held on election day;

(c) Article 12 of the Constitution that sets out the rules governing the proceedings at the Annual General Members' Meetings (hereinafter referred to as the 'AGMM'); and

(d) Article 13.14 of the Constitution, which provides for the appointment of directors.

7. The Board of Directors is therefore elected during the AGMM, which is customarily held in or about May or June of each year.

8. The most recent elections for the appointment of three directors of the company were held on 10 May 2018 in Dakar. During these elections, none of the candidates who stood for election were elected inasmuch as;

(a) the Respondent No.1's election guidelines, specifically at **Article 9.2**, provides **members with the option of voting for one candidate listed on the ballot paper or to select the "none of the above" option;**



Handwritten signatures and initials, including a large stylized 'A' and other illegible marks.

A copy of the Respondent No.1's specimen ballot paper is herewith attached and marked as ANNEX 2.

A copy of the Respondent No.1's election guidelines is herewith attached and marked as ANNEX 3.

A copy of the Respondent No.1's tally sheet is herewith attached and marked as ANNEX 4.

(b) The third option ('none of the above') polled more votes with the consequence that the vacancies were not filled as they should have been.

9. Further, one sitting director, namely [REDACTED] representing the North Africa region, resigned one day **before** the elections.
10. As a result of the above occurrences, the Respondent No.1 was effectively left with five directors on its Board, which only just allowed for the running of the said Board as the required quorum for a Board meeting is five.
11. To avoid the risk of being unable to hold Board meetings in the absence of one of the five directors, which would inevitably hamper the smooth running of the Board, the Board exercised its power under Article 13.14 of the Constitution and appointed, with effect from 18 July 2018, **three** directors in order to ensure that a quorum would reasonably be expected to be present for all subsequent Board meetings.
12. The Applicant avers that under the provisions of Article 13.14, these **three** 'additional' directors would hold office until the next AGMM, which is scheduled for June 2019. However, they cannot constitute a quorum for the scheduled June 2019 AGMM as they were mere Board appointees, and not elected by the AGMM as per Article 12.10(ii)(a) of the Constitution.
13. The Applicant avers that one of the **three** directors appointed by the Board in terms of Article 13.14 of the Constitution namely, [REDACTED], has resigned from the Board as from 26 November 2018.



### **C. Impracticability**

14. Consequently, it is presently impracticable for the Board to call an AGMM as it is unable to ensure compliance with the Articles 11.1 and 12.10 of its Constitution due to the status of the **three** 'additional' directors who do not represent any region.
15. The AGMM of the Respondent No.1, which requires a quorum of 10 **members** of which at least four **directors** must represent a region, is held at various locations in Africa and, as a consequence, it takes an average of six months to plan, organise and hold the AGMM.
16. Given the uncertainty regarding the presence of a quorum at the said AGMM, it is impracticable for the Board to convene and hold an AGMM. This poses a threat to the smooth running of the Respondent No.1's affairs and results in the Board's incapacity to discharge their fiduciary duties in the best interests of the company as provided for under its Constitution.
17. The Applicant avers that it is presently impracticable to hold an AGMM in terms of the Constitution of the Respondent. No.1.
18. The Applicant is therefore advised and verily believes that the intervention of the above Honourable Court is urgent and necessary for the Respondent No.1 to be able to convene and hold an AGMM in or about June 2019 to allow for the smooth running of its business and affairs.

### **D. The Prayers**

19. In light of the above, the Applicant therefore moves the above Honourable Court for;
  - (a) An Order waiving the terms and requirements of Article 12.10 of the Respondent No.1's Constitution in relation to a quorum for the AGMM to be held in or about June 2019;
  - (b) An Order declaring that a minimum of 10 members (irrespective of their status as regional or non-regional directors, registered or resource members) duly



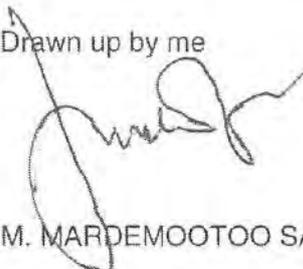
constitutes a quorum for the purposes of the AGMM to be held in or about June 2019; and

(c) Any such other Order that this Court may deem fit and necessary in the present circumstances.

20. The Applicant prays accordingly.

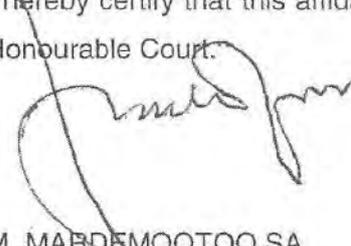
Solemnly affirmed by the above-named Deponent ]  
At the Supreme Court, Port Louis ]  
This 18<sup>th</sup> day of December 2018 ]



Drawn up by me  
  
M. MARDEMOOTOO SA

Before me  
  
Supreme Court  
L. Budhoo  
Chief Court Officer/Court Manager  
Supreme Court

I Hereby certify that this affidavit forms part of an application to be lodged before the above Honourable Court.

  
M. MARDEMOOTOO SA



(Pages 47 to 71, an additional copy of Annex 1 to Annex 4, were removed to save space. The content was substantially identical to the first copy of Annex 1 to Annex 4 on pages 10 to 37.)

## IN THE SUPREME COURT OF MAURITIUS

Return: SC/COM/MOT/1411/2018

The foregoing Motion Paper together with Affidavit and Annexes were duly served by me, the undersigned Court Usher upon:-

1. Afrinic Limited, by leaving true and certified copies thereof with [REDACTED], a Secretary, found at her place of work at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

2. Barrett Alan Peter,
3. Dr. Bope Christian Domilongo,
4. Ojedeji Oluwaseum Samson,
5. Ilunga Serge Kabwika,
6. Mpisane Vika William,
7. Youssef Professor Habib,

by leaving true and certified copies thereof for each of them in their absence, with [REDACTED], a Secretary at Afrinic Limited, found at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

UF RS 1050/-



On the 14<sup>th</sup> day of December 2018.



## IN THE SUPREME COURT OF MAURITIUS

Return: SC/COM/MOT/1411/2018

The foregoing Motion Paper together with Affidavit and Annexes were duly served by me, the undersigned Court Usher upon:-

1. Afrinic Limited, by leaving true and certified copies thereof with [REDACTED], a Secretary, found at her place of work at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

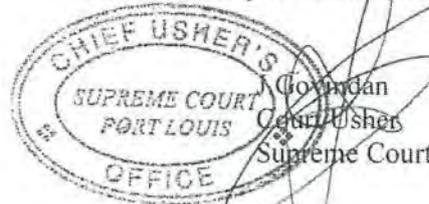
2. Barrett Alan Peter,
3. Dr. Bope Christian Domilongo,
4. Ojedeji Oluwaseum Samson,
5. Ilunga Serge Kabwika,
6. Mpisane Vika William,
7. Youssef Professor Habib,

by leaving true and certified copies thereof for each of them in their absence, with [REDACTED] a Secretary at Afrinic Limited, found at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

UF RS 1050/-



On the 14<sup>th</sup> day of December 2018.



## IN THE SUPREME COURT OF MAURITIUS

Return: SC/COM/MOT/1411/2018

The foregoing Motion Paper together with Affidavit and Annexes were duly served by me, the undersigned Court Usher upon:-

1. Afrinic Limited, by leaving true and certified copies thereof with [REDACTED], a Secretary, found at her place of work at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

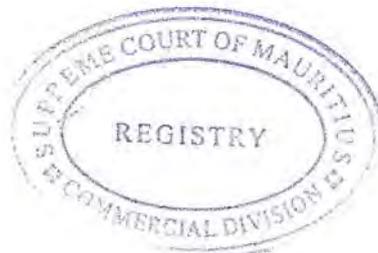
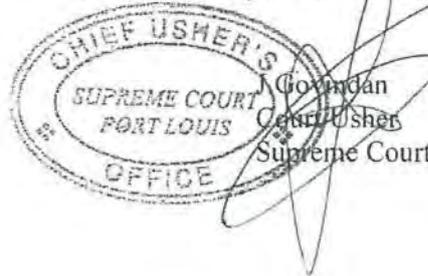
2. Barrett Alan Peter,
3. Dr. Bope Christian Domilongo,
4. Ojedeji Oluwaseum Samson,
5. Ilunga Serge Kabwika,
6. Mpisane Vika William,
7. Youssef Professor Habib,

by leaving true and certified copies thereof for each of them in their absence, with [REDACTED], a Secretary at Afrinic Limited, found at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

UF RS 1050/-



On the 14<sup>th</sup> day of December 2018.



IN THE SUPREME COURT OF MAURITIUS

Return: SC/COM/MOT/1411/2018

The foregoing Motion Paper together with Affidavit and Annexes were duly served by me, the undersigned Court Usher upon:-

1. Afrinic Limited, by leaving true and certified copies thereof with [REDACTED], a Secretary, found at her place of work at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

- 2. Barrett Alan Peter,
- 3. Dr. Bope Christian Domilongo,
- 4. Ojedeji Oluwaseum Samson,
- 5. Ilunga Serge Kabwika,
- 6. Mpisane Vika William,
- 7. Youssef Professor Habib,

by leaving true and certified copies thereof for each of them in their absence, with [REDACTED] a Secretary at Afrinic Limited, found at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

UF RS 10507-

On the 14<sup>th</sup> day of December 2018.

CHIEF USHER'S  
SUPREME COURT  
PORT LOUIS  
OFFICE

Govindan  
Chief Usher  
Supreme Court

SUPREME COURT OF MAURITIUS  
REGISTRY  
COMMERCIAL DIVISION

## IN THE SUPREME COURT OF MAURITIUS

Return: SC/COM/MOT/1411/2018

The foregoing **Motion Paper together with Affidavit and Annexes** were duly served by me, the undersigned Court Usher upon:-

1. **Afrinic Limited**, by leaving true and certified copies thereof with [REDACTED], a **Secretary**, found at her place of work at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

2. **Barrett Alan Peter,**
3. **Dr. Bope Christian Domilongo,**
4. **Ojedeji Oluwaseum Samson,**
5. **Ilunga Serge Kabwika,**
6. **Mpisane Vika William,**
7. **Youssef Professor Habib,**

by leaving true and certified copies thereof for each of them in their absence, with [REDACTED], a **Secretary at Afrinic Limited**, found at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

UF RS 1050/-



On the 14<sup>th</sup> day of December 2018.



IN THE SUPREME COURT OF MAURITIUS  
(BANKRUPTCY DIVISION)

---

26 December 2018

Mr M. Mardemootoo  
Senior Attorney

In the matter of:

In Re: S. Moonesamy v/s Afrinic Ltd. & ors. SC/COM/MOT/01411/2018

Your letter dated 20 December 2018 refers.

By order of Her Ladyship leave is hereby granted to you to upload the new affidavit.

  
E. Kirdalikhhan  
Secretary to Judge



## IN THE SUPREME COURT OF MAURITIUS

Return: SC/COM/MOT/1411/2018

The foregoing **Motion Paper together with Affidavit and Annexes** were duly served by me, the undersigned Court Usher upon:-

1. **Afrinic Limited**, by leaving true and certified copies thereof with [REDACTED], a **Secretary**, found at her place of work at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

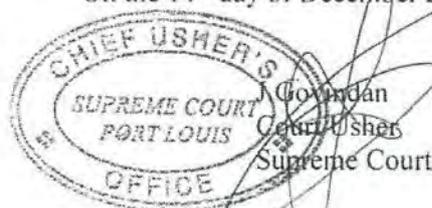
2. **Barrett Alan Peter**,
3. **Dr. Bope Christian Domilongo**,
4. **Ojedeji Oluwaseum Samson**,
5. **Ilunga Serge Kabwika**,
6. **Mpisane Vika William**,
7. **Youssef Professor Habib**,

by leaving true and certified copies thereof for each of them in their absence, with [REDACTED], a **Secretary at Afrinic Limited**, found at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

UF RS 1050/-



On the 14<sup>th</sup> day of December 2018.



## IN THE SUPREME COURT OF MAURITIUS

Return: SC/COM/MOT/1411/2018

The foregoing **Motion Paper together with Affidavit and Annexes** were duly served by me, the undersigned Court Usher upon:-

1. **Afrinic Limited**, by leaving true and certified copies thereof with [REDACTED], a **Secretary**, found at her place of work at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

2. **Barrett Alan Peter**,

3. **Dr. Bope Christian Domilongo**,

4. **Ojedeji Oluwaseum Samson**,

5. **Ilunga Serge Kabwika**,

6. **Mpisane Vika William**,

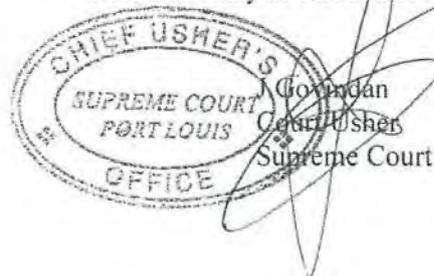
7. **Youssef Professor Habib**,

by leaving true and certified copies thereof for each of them in their absence, with [REDACTED], a **Secretary at Afrinic Limited**, found at the Company's Registered Office situate at 11<sup>th</sup> floor, Standard Chartered Tower, Cybercity, Ebene.

UF RS 1050/-



On the 14<sup>th</sup> day of December 2018.



Gowindan  
Court Usher  
Supreme Court



IN THE SUPREME COURT OF MAURITIUS  
(BANKRUPTCY DIVISION)

---

26 December 2018

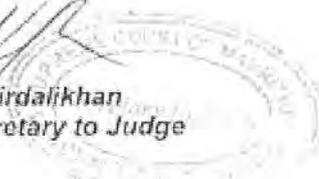
Mr V. Luchmaya  
Attorney at Law

In the matter of:

In Re: S. Moonesamy v/s Afrinic Ltd. & ors. SC/COM/MOT/014111/2018

I wish to inform you that Her Ladyship has taken cognizance of your letter dated 19 December 2018 and same has been placed on record.

  
E. Kirdalikhhan  
Secretary to Judge



**IN THE SUPREME COURT OF MAURITIUS**  
**(Before the Commercial Division)**  
**(Application under Section 118 of the Companies Act)**



In the matter of:

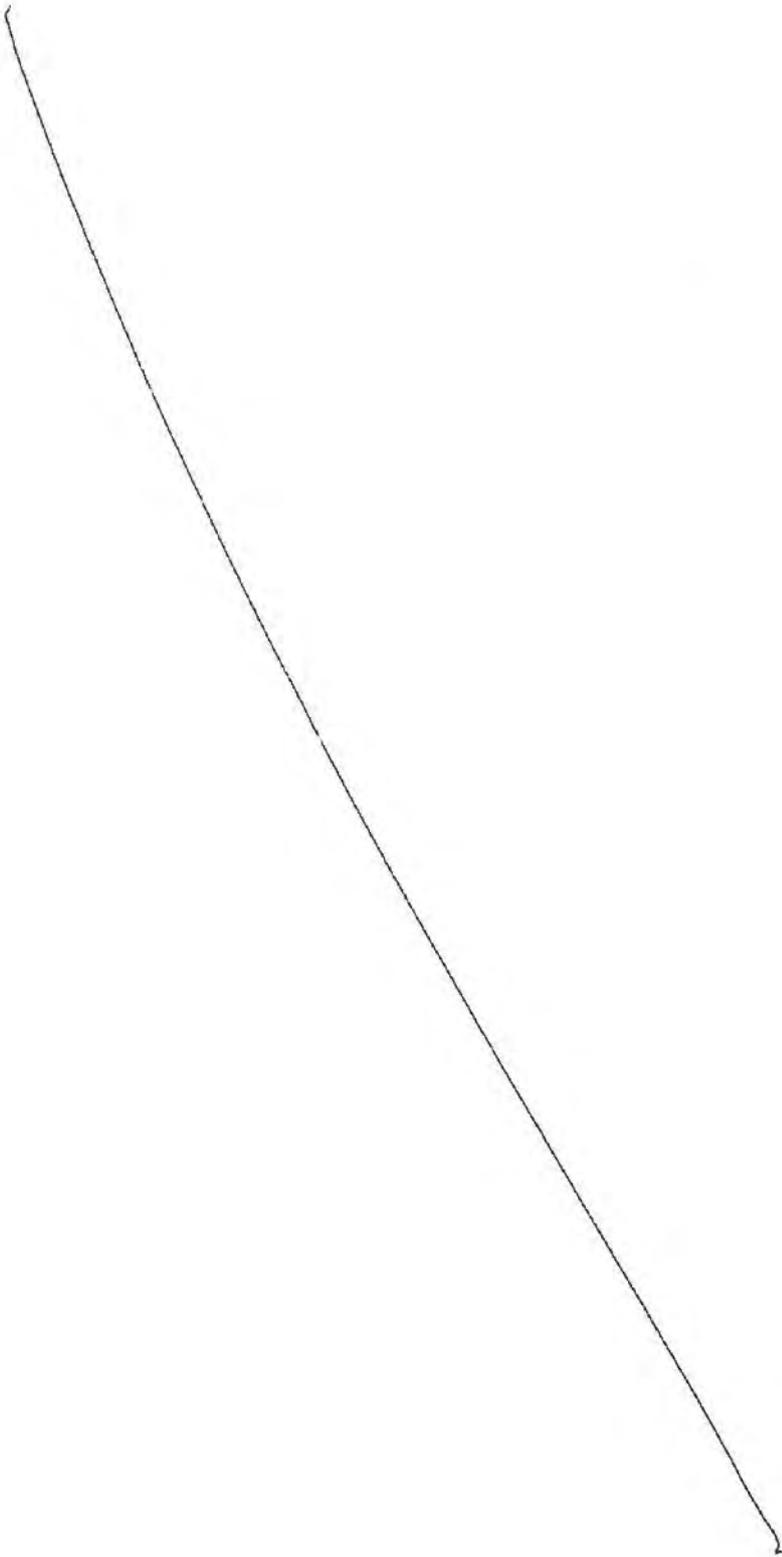
Subramanian MOONESAMY, of [REDACTED]

APPLICANT

V/S

- 1) **AFRINIC LTD**, having its registered office address at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 2) **Alan Peter BARRETT**, of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène;
- 3) **Dr. Christian Domilongo BOPE**, of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène
- 4) **Oluwaseum Samson OJEDEJI**, of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène
- 5) **Serge Kabwika ILUNGA**, of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène
- 6) **Vika William MPISANE** of [REDACTED], service to be effected at the registered office of **AFRINIC Ltd**, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène; and





- 7) Professor Habib YOUSSEF, of [REDACTED], service to be effected at the registered office of AFRINIC Ltd, situated at 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebène.

RESPONDENTS

In the presence of:

THE REGISTRAR OF COMPANIES, having its office address at One, Cathedral Square, Jules Koenig Street, Port Louis.

CO-RESPONDENT

I, Subramanian Moonesamy, a director of Afrinic Ltd, residing at [REDACTED] and holder of National Identity Card bearing No. [REDACTED]

MAKE SOLEMN AFFIRMATION [REDACTED] AND SAY THAT:

A. The Parties

1. I am a director of the Respondent No.1, AFRINIC Ltd, and I have duly been appointed as member of the Board of Directors as from 1 July 2017.
2. The Respondent No.1 is a private company limited by guarantee that was incorporated in Mauritius on or about **3 February 2004**. Its objects are, *inter alia*, 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.
3. The Respondents Nos. 2 to 7 are the other directors of the Respondent No.1 and together, we form the Board of Directors of the Respondent No.1.





*[Handwritten signature]*

4. The Co-Respondent is a public officer whose functions and duties are provided for in PART II of the Companies Act 2001.

**B. The Factual Background**

5. The Respondent No.1 operates within the framework of a constitution that has been drawn up in compliance with the statutory provisions set out in the Companies Act 2001.

A copy of said constitution is herewith attached and marked as ANNEX 1.

6. The relevant articles of the Constitution (*Annex 1 refers*) for the purposes of the present application are as follows;

(a) Article 9 of the Constitution, which provides for a Nomination Committee, that, *inter alia*, has the general responsibility for, and shall supervise the conduct of the polls by the Election Committee on election day;

(b) Article 10 of the Constitution, which establishes an Election Committee, which is entrusted with the duty to supervise the polls held on election day;

(c) Article 12 of the Constitution that sets out the rules governing the proceedings at the Annual General Members' Meetings (hereinafter referred to as the 'AGMM'); and

(d) Article 13.14 of the Constitution, which provides for the appointment of directors.

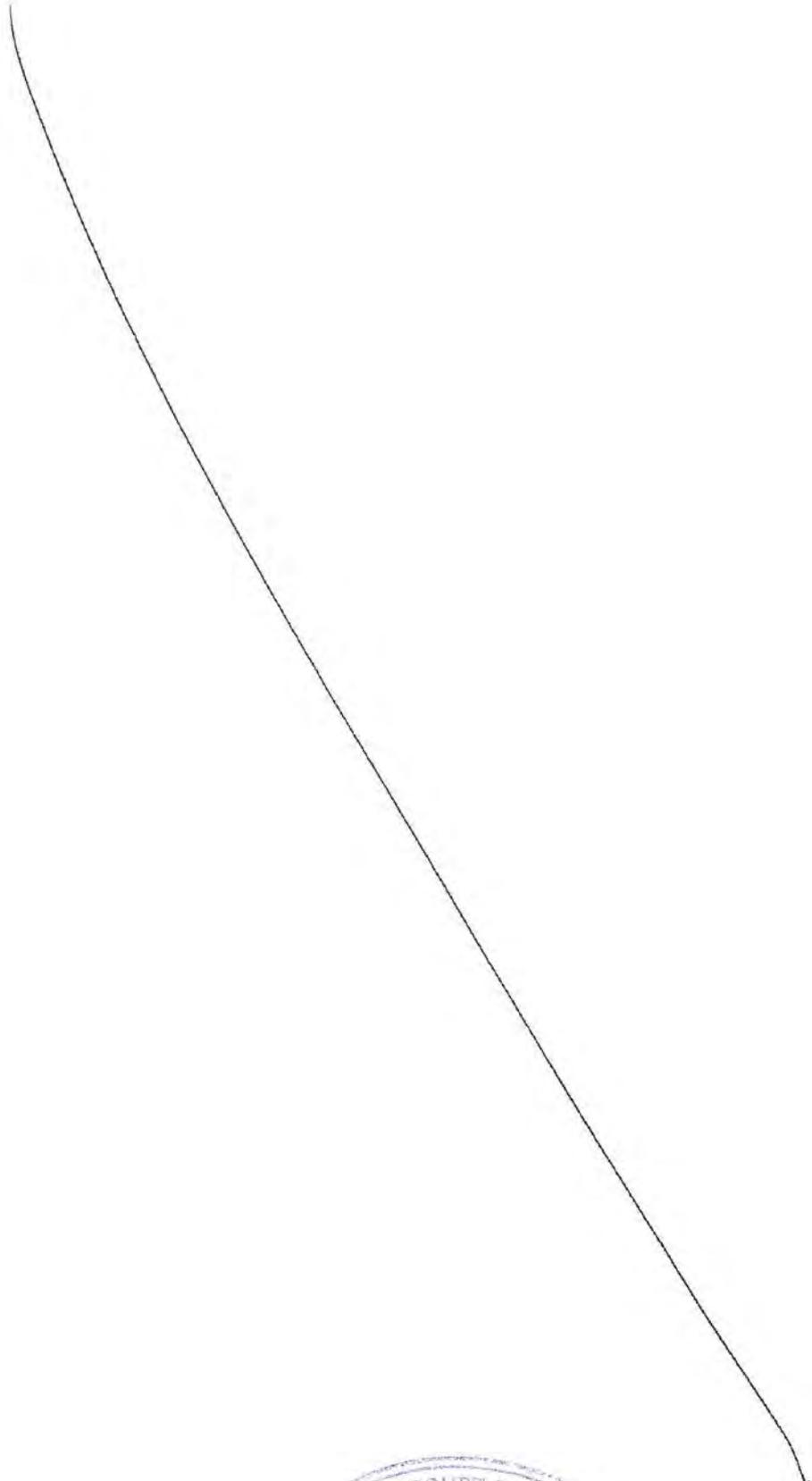
7. The Board of Directors is therefore elected during the AGMM, which is customarily held in or about May or June of each year.

8. The most recent elections for the appointment of three directors of the company were held on 10 May 2018 in Dakar. During these elections, none of the candidates who stood for election were elected inasmuch as;

(a) the Respondent No.1's election guidelines, specifically at **Article 9.2**, provides members with the option of voting for one candidate listed on the ballot paper or to select the "none of the above" option;



0



*[Handwritten signature]*

A copy of the Respondent No.1's specimen ballot paper is herewith attached and marked as ANNEX 2.

A copy of the Respondent No.1's election guidelines is herewith attached and marked as ANNEX 3.

A copy of the Respondent No.1's tally sheet is herewith attached and marked as ANNEX 4.

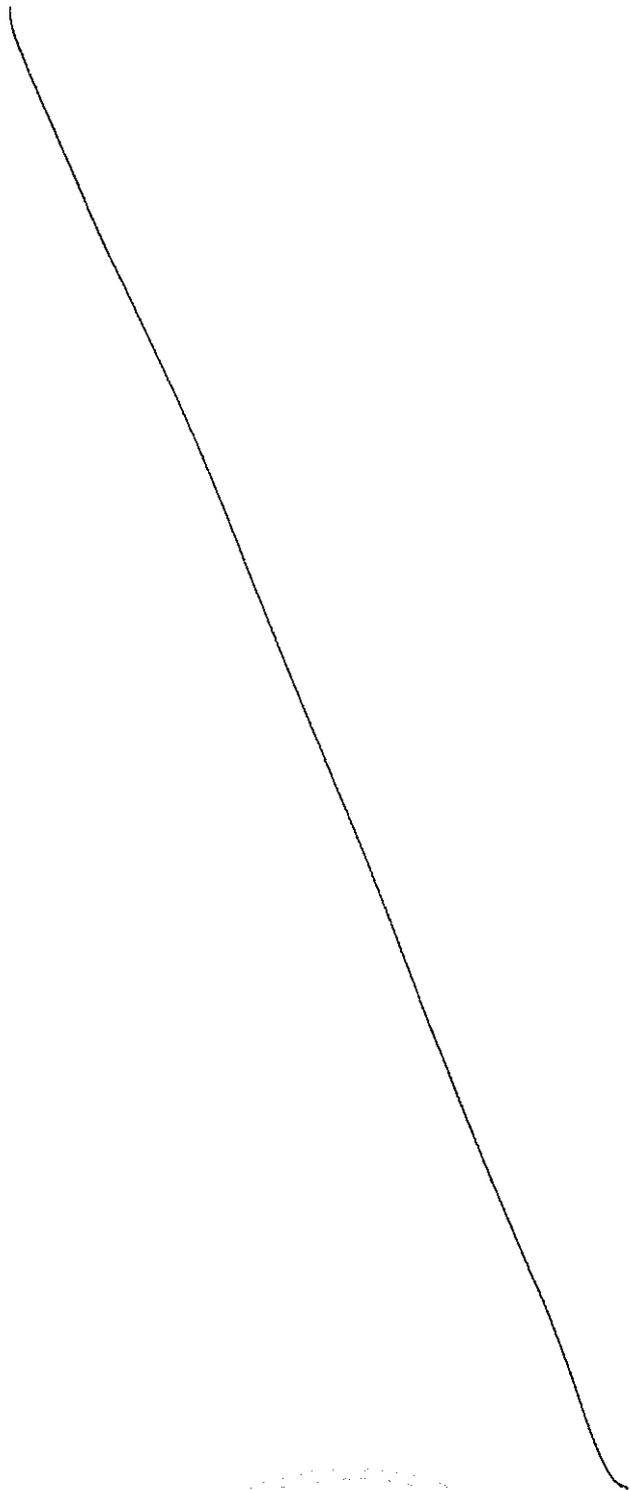
(b) The third option ('none of the above') polled more votes with the consequence that the vacancies were not filled as they should have been.

9. Further, one sitting director, namely [REDACTED] representing the North Africa region, resigned one day **before** the elections.
10. As a result of the above occurrences, the Respondent No.1 was effectively left with five directors on its Board, which only just allowed for the running of the said Board as the required quorum for a Board meeting is five.
11. To avoid the risk of being unable to hold Board meetings in the absence of one of the five directors, which would inevitably hamper the smooth running of the Board, the Board exercised its power under Article 13.14 of the Constitution and appointed, with effect from 18 July 2018, **three** directors in order to ensure that a quorum would reasonably be expected to be present for all subsequent Board meetings.
12. The Applicant avers that under the provisions of Article 13.14, these **three** 'additional' directors would hold office until the next AGMM, which is scheduled for June 2019. However, they cannot constitute a quorum for the scheduled June 2019 AGMM as they were mere Board appointees, and not elected by the AGMM as per Article 12.10(ii)(a) of the Constitution.
13. The Applicant avers that one of the **three** directors appointed by the Board in terms of Article 13.14 of the Constitution namely, [REDACTED] has resigned from the Board as from 26 November 2018.



This block contains several handwritten signatures and initials in black ink, appearing to be official endorsements or approvals.

C



*Handwritten signature or initials.*

### C. Impracticability

14. Consequently, it is presently impracticable for the Board to call an AGMM as it is unable to ensure compliance with the Articles 11.1 and 12.10 of its Constitution due to the status of the **three** 'additional' directors who do not represent any region.
15. The AGMM of the Respondent No.1, which requires a quorum of 10 **members** of which at least four **directors** must represent a region, is held at various locations in Africa and, as a consequence, it takes an average of six months to plan, organise and hold the AGMM.
16. Given the uncertainty regarding the presence of a quorum at the said AGMM, it is impracticable for the Board to convene and hold an AGMM. This poses a threat to the smooth running of the Respondent No.1's affairs and results in the Board's incapacity to discharge their fiduciary duties in the best interests of the company as provided for under its Constitution.
17. The Applicant avers that it is presently impracticable to hold an AGMM in terms of the Constitution of the Respondent. No.1.
18. The Applicant is therefore advised and verily believes that the intervention of the above Honourable Court is urgent and necessary for the Respondent No.1 to be able to convene and hold an AGMM in or about June 2019 to allow for the smooth running of its business and affairs.

### D. The Prayers

19. In light of the above, the Applicant therefore moves the above Honourable Court for;
  - (a) An Order waiving the terms and requirements of Article 12.10 of the Respondent No.1's Constitution in relation to a quorum for the AGMM to be held in or about June 2019;
  - (b) An Order declaring that a minimum of 10 members (irrespective of their status as regional or non-regional directors, registered or resource members) duly



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.



*[Handwritten signature]*

*[Handwritten mark]*

constitutes a quorum for the purposes of the AGMM to be held in or about June 2019; and

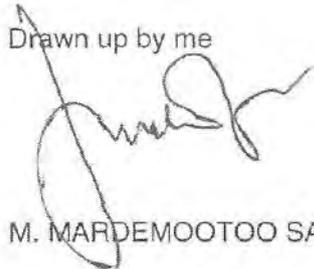
(c) Any such other Order that this Court may deem fit and necessary in the present circumstances.

20. The Applicant prays accordingly.

Solemnly affirmed by the above-named Deponent ]  
At the Supreme Court, Port Louis ]  
This 18<sup>th</sup> day of December 2018 ]



Drawn up by me



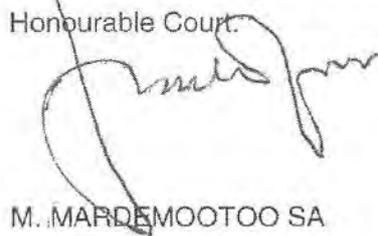
M. MARDEMOOTOO SA

Before me



Supreme Court  
L. Budhoo  
Chief Court Officer/Court Manager  
Supreme Court

I hereby certify that this affidavit forms part of an application to be lodged before the above Honourable Court.



M. MARDEMOOTOO SA





(Pages 47 to 71, an additional copy of Annex 1 to Annex 4, were removed to save space. The content was substantially identical to the first copy of Annex 1 to Annex 4 on pages 10 to 37.)

This 15<sup>th</sup> day of January 2019

Her Ladyship  
The Honourable Judge R Mungly-Gulbul  
Commercial Division  
Supreme Court of Mauritius  
Port-Louis.

Your Ladyship,

**RE: SUBRAMANIAN MOONESAMY VS AFRINIC LTD & ORS (SC/COM/MOT/01411/2018)**

I appear for the Applicant in the above matter.

I refer to the letter dated 19<sup>th</sup> December 2018, filed on behalf of the Respondents, where it stated that the Respondents have no objection to the amendment and to the prayer.

I should therefore move in terms of the motion paper.

Thanking Your Ladyship in anticipation.

Yours respectfully,



Repl. M.Mardemootoo SA (J. Radhakisson)



SC/COM/MOT/01411/2018

IN THE SUPREME COURT OF MAURITIUS  
(Bankruptcy Division)

In the matter of:

S. Moonesamy

Applicant

v

Afrinic Ltd. & 6 ors.

Respondents

i.p.o.

The Registrar of companies

Co-Respondent

ORDER

Upon considering the letter dated 15 September 2019 from Mr M. Mardemootoo, Senior Attorney for the Applicant, I note that the Co-Respondent has not yet uploaded its stand.

I wish to have the stand of the Co-Respondent before making any order.

I therefore order the Co-Respondent to upload its stand with respect to the application by Friday 25<sup>th</sup> instant

Chambers, this 22<sup>nd</sup> day of January 2019

*R. Muzley Gilbert*  
JUDGE



This 4<sup>th</sup> day of February 2019

Her Ladyship  
The Honourable Judge R Mungly-Gulbul  
Commercial Division  
Supreme Court of Mauritius  
Port-Louis.

Your Ladyship,

**RE: SUBRAMANIAN MOONESAMY VS AFRINIC LTD & ORS (SC/COM/MOT/01411/2018)**

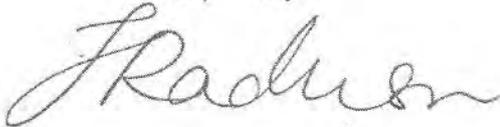
I appear for the Applicant in the above matter.

I wish to inform Your Ladyship that the Co-Respondent has so far failed to upload its stand in the above matter.

In this respect, I shall move in terms of the Motion Paper.

Thanking Your Ladyship in anticipation.

Yours respectfully,



Repl. M.Mardemootoo SA (J.Radhavissoon)



(Bankruptcy Division)

In the matter of:

S. Moonesamy

Applicant

v

Afrinic Ltd. & 6 ors.

Respondents

i.p.o.

The Registrar of companies

Co-Respondent

ORDER

Upon reading the letter dated 4<sup>th</sup> February 2019 from Mr M. Mardermootoo, Senior Attorney for the Applicant, moving for the order, the Respondents having no objection to the application:

And after considering the Motion Paper and affidavit dated 7 and 18 December 2018 as well as the annexes thereto, I hereby :-

- (a) Waive the terms and requirements of Article 12.10 of the Respondent No. 1's constitution in relation to a quorum for the AGMM to be held in or about June 2019; and
- (b) Declare that a minimum of 10 members (irrespective of their status as regional or non-regional directors, registered or resource members) duly constitutes a quorum for the purposes of the AGMM to be held in or about June 2019.

Chambers, this 6<sup>th</sup> day of February 2019

  
JUDGE

SC/COM/MOT/01411/2018

IN THE SUPREME COURT OF MAURITIUS  
(Bankruptcy Division)

In the matter of:

S. Moonesamy

Applicant

v

Afrinic Ltd. & 6 ors.

Respondents

i.p.o.

The Registrar of companies

Co-Respondent

ORDER

Upon reading the letter dated 4<sup>th</sup> February 2019 from Mr M. Mardemootoo, Senior Attorney for the Applicant, moving for the order, the Respondents having no objection to the application;

And after considering the Motion Paper and affidavit dated 7 and 18 December 2018 as well as the annexes thereto, I hereby :-

- (a) Waive the terms and requirements of Article 12.10 of the Respondent No. 1's constitution in relation to a quorum for the AGMM to be held in or about June 2019; and
- (b) Declare that a minimum of 10 members (irrespective of their status as regional or non-regional directors, registered or resource members) duly constitutes a quorum for the purposes of the AGMM to be held in or about June 2019.

Chambers, this 6<sup>th</sup> day of February 2019

*R. Mervyn Goolbsy*  
JUDGE

