

**MINUTES OF THE SPECIAL BOARD MEETING HELD DURING ON 05 MARCH 2019 AT 12:10 UTC  
VIA ONLINE CONFERENCING SYSTEM**

**Present:**

Mr Alan Barrett (AB)	CEO	
Dr Christian Bope (CB)	Member	Central Africa
Mr S.Moonesamy (SM)	Member	Indian Ocean
Mr Habib Youssef (HY)	Member	Northern Africa
Mr Vika Mpisane (VM)	Member	Southern Africa
Mr Ousmane Ly (OL)	Member	Western Africa
Mr Robert Ford (RF)	Member	Eastern Africa
Mr Serge Ilunga (SI)	Member	Non Geographical
Mr Seun Ojedeji (SO)	Member	Non Geographical

**In Attendance:**

Mr Ashok Radhakisson (AR)      Legal Counsel

**AGENDA**

1. Management violation of a contractual obligation
2. Violation of an NDA by a Board Member
3. AGMM Quorum Update

**BUSINESS OF THE DAY**

The Chair CB welcomed the Members present and opened the meeting at 12:10 UTC.

A roll call was carried out the confirm quorum.

SM declared a conflict of interest with regards to the Agenda Items under discussion in the present special meeting.

## **1. Management violation of a contractual obligation**

The Chair opened the floor for discussion from the Members.

SI introduced that AFRINIC is an organization, and rules and procedures should be followed by members and the Board should act as one including the CEO as ex-officio. The CEO has to consult the Board on some matters before acting. In the case of the AGMM, it is the responsibility of the Board and there is an issue in the way the CEO has acted and may be considered as a violation of his contractual obligation. The responsibility of the Board is to look upon the smooth running of the organization and its sustainability and to manage the interaction within the community. The Board has to work together for the sustainability of the organization.

The CEO highlighted that the document that was shared on the community mailing list was a public document, a public document that was received directly from the Court and not subject to NDA and privilege, and was not received in virtue of the employment at AFRINIC but received from the Court registry. The CEO further affirmed that it was important and for the best interest of the company to share the document to the community.

The Chair CB clarified that the CEO might have the best intention but should not go against the Board, the matter was still under discussion on the Board mailing list. The Chair pointed out that on the 9 February, he shared an email that he wanted to hear the views of the Board before sharing the document to the community.

VM was of the view that the Board has an issue in the way it operates and has to work a lot on its team building. With regards to the Agenda Items under discussion, VM pointed out that matter of governance and sharing with the members should be under the responsibility of the Board. The Board should have agreed as a whole to release the document. He recommended that the communication within the Board should be re-considered and the Board should have been notified before the members concerned shared the document to the public.

SO said that the Board has to establish whether the document can be publicly accessed. The Legal counsel had in a number of occasions highlighted that the judgment was a publicly accessible document hence there was no reason to delay its publication. The Board Directors were elected by the members and have fiduciary responsibilities and are accountable to the members that have elected each director. If the document is publicly available, then there is no issue in sharing the document. SO was of the view that there is a problem in the communication by the leadership of the Board. He stated that he has noticed that when requests from certain community members are brought to the attention of the Chair by a certain member of the Board, the Chair does not entertain the request. He believes that there is a one-sided communication within the Board. He pointed out to the Board that some actions should be entertained in a timely manner. SO supported the CEO in sharing the document to the members noting that it has helped to safeguard the image of the organization and that of the Board. SO was of the opinion that he has not done anything wrong in sharing the document and the CEO has done his work within the scope. SO appealed to the Chair to act on members' request in a timely manner and all members should be served equally, the Board should trust and respect each member.

HY reminded the Board on the advice of the Legal Counsel, which pointed out that the document is already available in public and there is no need to come back to the Board to communicate about it. HY does not see the purpose of the present discussion but will rather redirect the discussion to how to improve the future operations of the Board. HY that there was no wrong intention of the particular Board Members in sharing the document and there is no concern.

RF was of the view that being a bottom-up approach organization and elected by Members, the Board has to exercise the best interest to represent the members, and there is the need to have mutual respect and understanding in their operations. There is the matter of principles to be followed and the also matter of urgency. It is not appropriate that the CEO always come to the Board to ask approval for even minor issues, the CEO should be able to operate within his prerogatives and the Bylaws. The CEO should be given the autonomy to do certain actions based on his judgements. If the CEO has broken a procedural matter, it is not something that can be ruled against him, he was acting in his prerogatives. We can only tell him in the future to share with the Board first. He will prefer that the Board to refrain from pointing figures to individuals and to consider all members are working for the interest of AFRINIC.

SM recalled that the Board collectively agreed to take the AGMM matter to Court and there was no decision about disclosing the personal data to the community. It was just a matter of when to disclose the information and what to disclose. It is not because the document is public, that we can disclose to the public mailing list.

*SO disconnected at 13:09 UTC*

The Board decided to excuse the CEO and his management team to allow for an independent and objective discussion about the publication of the court case decision to the community without the approval of the Board.

*SO joined at 13:20 UTC*

*The CEO and the Executive Assistant left the meeting.*

*The Chair CB opened the discussion at 13:21 UTC*

SO expressed his discomfort with this discussion as he felt that there was no need to recuse management. He informed the Board that he had also shared the document with members HY also stated that he was comfortable with retaining the CEO in the discussion, but was also comfortable if the majority felt that the CEO should be recused.

SI stated that he found it unfortunate that Board members published the court decision without the Board's concurrence. He also did not think it was acceptable for the CEO to publish the decision by getting a clear decision of the Board.

OL reiterated that it is important for the AfriNIC officials to respect the rules. If the CEO is found in fault, then a sanction may be imposed according to the rules. Board members should be responsible to the Board and AfriNIC as a whole and not to the group nominating him.

SO expressed disappointment with the board that the publication of the court decision was being made a topic for a Board discussion. Directors are accountable to members as well. If the CEO has violated no confidentiality, then we must note that and the fact that the Board should not sanction the CEO for his action. The Board needs to revise its rules of engagement so it is clear

within what time range the Board is expected to communicate with members to avoid the repeat of the court decision incident.

The Chair CB recalled that the CEO's request to publish the decision was too short as he published the decision within hours after making the request and without awaiting the Board and especially the Chair's approval.

RF agreed that the CEO should have consulted the Chair. It was not clear what was the urgency that made the CEO not to await a Board approval. He also urged SO to avoid interrupting the Chair and to await his turn to express his opinion, as this promotes a good communication culture. He agrees with SO that the discussion should be minuted because the Board needs to account for its decisions. The Board needs to revise its bylaws that deal with Board communications and to ensure that each Director is fully aware of their communication obligations.

*At 13h54 UTC RF left the meeting.*

VM advised that the Board should look at whether or not the CEO has breached any AfriNIC rule especially his confidentiality obligations. It was clear that the CEO did not break any confidentiality rule because the Court decision was a public document. However, the CEO failed to exercise good discretion in that he should first have consulted with, and sought approval of, the Board Chairperson prior to publishing the decision. The Board Chair needs to meet the CEO to make him aware of his responsibilities in detail towards the Board, and to appreciate that he is accountable to the Board and not to the community members. The CEO should avoid requesting the approval of Board resolutions directly from the Directors outside Board meetings. The CEO should direct such resolution requests to the Board Chair for him to send to the Directors. The Board needs to contract a Company Secretary urgently, as that functionary would have helped advise the Board and the CEO on matters such as the court decision incident.

HY noted that the court decision was already a public document. He agrees the CEO should have at least consulted the Board Chair before his action. His action was procedurally wrong. He noted that part of the problem was the manner in which too many decisions were taken via too many emails. We need to have a clear, professional communication channel through which the Board communicates with the community to avoid a scenario where one Director communicates with the community on Board matters. He agrees that the Board has to review its bylaws to alleviate communication challenges within the Board. He found it unacceptable for the CEO to assume that the Board has approved a matter on the Board mailing list if there has been no objection from the Board mailing list.

SM commented that a Company Secretary would have helped the Board address matters such as these in a better fashion. He agreed there might be urgent matters outside Board meetings, but these matters should not be matters requiring Board decisions within hours. He found it unacceptable to assume that an email request was approved if there was no objection from the Board members. He was surprised to note that the Board Chair was not informed exactly what the CEO was requesting to disclose to the community.

*The CEO and the Executive Assistant were asked to re-joined the meeting at 14:25 UTC.*

The Chair CB summarized the decision of the Board pursuant to the discussion as follows:

- the CEO should have consulted the Board with regards to the publication; if it was urgent the CEO should have consulted the Chair;
- the Management has a tendency to send too many documents to the Board; unless there is an urgent matter, all documents or decisions which require Board approval should be submitted for Board discussion at least 14 days prior scheduled Board meeting,
- the CEO to discuss with the Chair first before engaging directly with the Board,
- there was no breach of confidentiality by the CEO,
- there is the need to improve the communication process between the Board, Chair and CEO. The Chair CB added that the CEO is accountable to the Board and not to the community.
- HY advised the CEO that official documents pertaining to the organisation should always be shared and communicated by an official division/channel of the organization.

The Chair further added that a Company Secretary may be required to assist the Board in the matter of corporate governance.

## **2. Violation of an NDA by a Board Member**

SI claimed that there was a violation of NDA by Board member SO, in that SO had shared a copy of the court judgement to the Members mailing list.

SI noted that the substance of this matter had already been discussed under the previous agenda item.

SO noted his comments during the discussion on the first agenda item and again reiterated his disappointment that the publication of the court decision is being made a topic for a Board discussion. He stated that he was even more disappointed that a fellow Board member has called a special Board meeting to allege that he violated NDA and even suggesting his removal from the Board.

SO reminded the Board that he had requested the publication of the same document a long time ago which the Chair himself agreed to initially subject to the legal counsel's advice. Surprisingly the Chair made a U-turn after the legal counsel clearly stated that there wasn't anything wrong with publishing and that in fact it is the right thing to do. SO noted that while the entire Board are accountable to members, individual Board members are also accountable to members and it was based on his responsibility that he provided the judgment to members. So also reminded the Board that before he did same, that he as a form of courtesy still notified the Board of his intention which wasn't supposed to have been applicable.

The Board concluded that there was no breach of NDA by the Board Member SO. The Board agreed that there should be more work on Board engagement and interaction.

## **3. AGMM Quorum Update**

Defer to next meeting.

The Chair asked the Board whether there is a need to seek SM's consent before the public release of the Court Rulings. After discussion, there was no agreement on whether to seek consent.

#### **4. Closure**

The Chair CB moved to close the meeting at 15:16 UTC. Proposed SM. Seconded VM.