

GUIDELINES & MOTION TEMPLATES

Section 18.12 Special IFRs

1. Introduction

Following the adoption by the GNSO Council of the revised GNSO Operating Procedures, as well as the proposed modifications to the ICANN Bylaws adopted by the ICANN Board of Directors on 13 May 2018, staff has outlined in the table below the additional proposed steps to be taken, including guidance and motion templates, to ensure preparedness as well as facilitate the ability for the GNSO Council to act in relation to the new roles and responsibilities outlined in the post-transition Bylaws. These steps fall within the GNSO's existing processes and procedures.

2. Background

Per the relevant excerpts from Section 18.12 of the ICANN Bylaws:

(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW [under] the following conditions:

(i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;

(ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures.

(iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and

(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO Supermajority.

and,

(c) A recommendation of an IFRT for a Special IFR shall only become effective if, with respect to each such recommendation (each, a "**Special IFR Recommendation**"), each of the following occurs:

- (i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;
- (ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the Special IFR Recommendation; and
- (iii) The EC has not rejected the Board's approval of the Special IFR Recommendation pursuant to and in compliance with Section 18.12(e).

3. Bylaws and Additional Proposed Steps:

<p>SECTION 18.12 SPECIAL IFRS</p> <p>“(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI’s performance under the IANA Naming Function Contract and IANA Naming Function SOW [under] the following conditions:</p> <p>(i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization’s respective operating procedures;</p> <p>(ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization’s respective operating procedures;”</p>	<p>In those instances where there is a reference to GNSO Supermajority, there is no need to add the voting threshold to section 11.3 as a GNSO Supermajority is already a defined term.</p> <p>For (a) there needs to be a process for conducting a review in either (i) and (ii) and then a consultation process developed with the ccNSO on whether to initiate the IFR. Only then the threshold comes into play.</p> <p>For the review referenced in (i) and (ii), the GNSO has processes available such as the GNSO Input Process (GIP) it could use.</p>	<p>Staff (to work with DT, if applicable) to develop for (a) guidance on conducting a review for (i) and (ii) and then a consultation process developed with the ccNSO on whether to initiate the IFR.</p>
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4. Guidelines for Using the GNSO Input Process for a Special IFR

4.1 Introduction

The process of developing and providing advice to the GNSO's Representative on the Empowered Community (EC) Administration includes whether to request the initiation of a Special IFR in consultation with the ccNSO. In deciding whether to request the initiation of a Special IFR, the GNSO Council must decide whether the following conditions have been met, per the Bylaws:

- (i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;
- (ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures.

Per the GNSO Operating Procedures, the GNSO Council may initiate a [GNSO Input Process \(GIP\)](#) per ANNEX 3 of the GNSO Operating Procedures "to provide input on matters that may not involve gTLD policy, for example in response to a request from the ICANN Board or in response to a public comment forum...".

Per the following guidelines, GNSO Council must select a decision process and document its deliberations and decisions. GNSO Council should consider using the GIP to determine whether either of the conditions for initiating a Special IFR has been satisfied, as set out in Bylaws section 18.12(a)(i) and (ii) above.

If the GNSO Council uses the GIP it will follow the procedures in ANNEX 3 of the GNSO Operating Procedures, except as noted in the guidelines below. Once the GIP is completed the GNSO Council will consider whether to approve the GIP recommendations. Upon approval of the GIP, the GNSO EC Representative shall notify the ccNSO of the outcome of the GIP. If the outcome is a request to initiate a Special IFR, the GNSO will engage in a consultation process with the ccNSO on whether to initiate a Special IFR. See section 5 below.

4.2 Planning for Initiation of a GIP

Although the GNSO Council is not mandated to use the GIP when determining whether to initiate a Special IFR, given the gravity of the situation presented by a possible failure of PTI performance it is extremely important for the GNSO Council to use a well-documented process such as the GIP provides.

4.3 Minimum requirements for a GIP Initiation Request

To initiate a GIP relating to a Special IFR, a GNSO Council member must submit a request to the GNSO Council as in Section 3 of ANNEX 3, but with the following minimum information as it pertains specifically to a Special IFR:

1. Name of Council member (SG/C)
2. Origin of issue: PTI Performance Failure as evidenced via 18.12 (a)(i) and (ii)
3. Scope of the effort: Review of 18.12 (a)(i) and (ii)
4. Proposed GIP mechanism: The GIP Team
5. Method of operation, if different from GNSO Working Group Guidelines (as appropriate in the context of the time and context constraints of a Special IFR).
6. Decision-making methodology for the GIP Team, if different from GNSO Working Group Guidelines (as appropriate in the context of the time and context constraints of a Special IFR)
7. Desired completion date and rationale for this date.

As in ANNEX 3, Section 3, Any additional information that can facilitate the work on the GIP, such as information that should be considered and/or other parties that should be consulted, is encouraged to be provided as well.

4.4 Initiation of a GIP

As in ANNEX 3, Section 4, any Council member can request that a GIP is initiated following the steps in section 4.3. However, in the case of a GIP relating to a Special IFR, given the importance of the situation, a Council vote is required to initiate via a motion that is approved by a simple majority vote of each House.

4.5 GIP Outcomes and Processes

The GNSO Council will follow the procedures in ANNEX 3, Section 5, with the exception of a GIP relating to a Special IFR as established in Bylaw Article 18, Section 18.12 (“Special IFR”).

For a Special IFR the ICANN Bylaws stipulate that the GNSO and ccNSO must:

- (i) consider the outcomes of both the CSC Remedial Action Procedures and the IANA Problem Resolution Process (both as set forth in the IANA Naming Function Contract), and
- (ii) conduct meaningful consultation with other SOs and ACs with respect to the PTI performance issue and whether or not to initiate a Special IFR.

With respect to the terminology used in the Bylaws in that the GNSO and ccNSO must “consider” the outcomes, the Bylaws provide further guidance as follows, in section 18.12(a)(i), (ii) and (iii) (relevant text bolded for emphasis):

(i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and **the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;**

(ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and **the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;**

(iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR;

Furthermore, in order to have “meaningful” consultation with other SOs and ACs jointly with the ccNSO (as per the separate Guidelines for GNSO-ccNSO Joint Consultation on Initiation of a Special IFR), the GIP Team must solicit input relating to whether or not to initiate a Special IFR from each GNSO Stakeholder Group and Constituency in the early stages of the GIP to be able to work quickly and efficiently with the ccNSO in carrying out this responsibility. Detailed records should be kept to document this solicitation of input, per 4.6 below. Given the criticality of a failure in PTI performance, the timeframe provided for responses may be short: failing to provide input is not a valid basis for delay or objection.

4.6 Preparation of Proposed GNSO Input

In the case of a GIP related to a Special IFR, it is critical for the GIP Team to document community input relating to whether or not to initiate a Special IFR. Thus, the following information is not optional per ANNEX 3, Section 6, but must be provided:

- I. Compilation of Stakeholder Group and Constituency Statements (where these were sought and provided);
- II. Statement of level of consensus for Proposed GNSO Input;
- III. Information regarding the members of the GIP Team; and
- IV. A statement on the GIP Team discussion concerning the impact of the proposed input which could include areas such as economic impact, competition, operations, privacy and other rights, scalability and feasibility.

As they are mandatory, these elements must be included as part of the Proposed GNSO Input and by reference to information posted on an ICANN website or wiki (such as through a hyperlink).

The Proposed GNSO Input should be delivered to the GNSO Council for its consideration in the form of a motion for the Council's action.

4.7 Preparation of Final GNSO Input

In the case of a GIP relating to a Special IFR, and contrary to ANNEX 3, Section 7, there will be no public comment period for further input. The final input will be developed based on the statements received as in 4.6 above.

4.8 Council Deliberations

As in ANNEX 3, Section 8, the GNSO Council is encouraged to take action on the Proposed and/or Final GNSO Input (as applicable) in a timely manner, and preferably no later than the second GNSO Council meeting after the input is presented, so long as such a timeline would qualify as timely in the circumstances.

As noted above, in the case of a GIP relating to a Special IFR, approval of the GIP recommendations submitted to the Council does require a Council vote via a motion that is approved by a simple majority vote of each House as set forth at Article X, Section 3-9 of the ICANN Bylaws. The outcome of the vote should be recorded and provided together with the results of the GIP to the entity that initially requested the input.

4.9 Transmission of the Outcome of the GIP

In the case of a GIP relating to a Special IFR, within 24 hours of its decision the GNSO Secretariat shall transmit the results of a GIP, including any recommendations adopted by the GNSO Council, to the GNSO's EC Representative and to the Chair of the ccNSO. The GNSO Secretariat will post the results on the GNSO web and wiki pages, and also convey it to the EC Administration.

4.10 Termination or Suspension of a GIP Prior to Final Report

The Special IFR GIP shall follow ANNEX 3, Section 10.

Guidelines for GNSO-ccNSO Joint Consultation on Initiation of a Special IFR

5.1 Introduction

For Special IFRs ICANN Bylaws Section 18.12(a) states:

A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (a "**PTI Performance Issue**"), following the satisfaction of each of the following conditions:

- (i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;
- (ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;
- (iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and
- (iv) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO Supermajority.

The following are guidelines for the joint GNSO-ccNSO consultation on whether to initiate a Special IFR assuming that both either 18.12(a)(i) and/or (ii) have occurred and the ccNSO and GNSO have considered the outcomes according to their internal procedures.

5.2 Establishing the SIFR Initiation Coordination Team

As soon as the ccNSO and GNSO Councils are informed by the Customer Standing Committee about a performance issue as defined in the CSC Remedial Action Procedure, the GNSO and ccNSO Council shall as soon as possible each appoint three (3) members including the Chairs ~~and~~ in accordance with their own rules and procedures to a SIFR Initiation Coordination Team (SICT). The GNSO and ccNSO Chairs shall jointly chair the SICT. If the Remedial Action Procedure results in resolution of the PTI Performance Issue, the SICT will be disbanded.

5.3 Initiating the Joint Consultation

When the GNSO has completed the GNSO Input Process for a Special IFR (Section 4.0 above), and the ccNSO has completed its internal processes, the GNSO and ccNSO shall begin a joint consultation process to determine whether to initiate a Special IFR.

The GNSO Chair shall formally provide to the ccNSO Chair the input agreed by the GNSO Council as the outcome of the GNSO Input Process for a Special IFR. The GNSO Chair shall arrange for this input to also shall be posted to the GNSO website and wiki, subject to redaction requested by input provider. The ccNSO Chair shall formally confirm receipt of the input.

The ccNSO Chair shall formally provide to the GNSO Chair the input agreed by the ccNSO Council per its internal processes. The ccNSO Chair shall arrange for this input to also shall be posted to the ccNSO website and wiki, subject to redaction requested by input provider. The GNSO Chair shall formally confirm receipt of the input.

The GNSO and ccNSO shall jointly release a statement through the SICT that they are initiating a Joint Consultation on whether to initiate a Special IFR. The statement shall be posted on the GNSO and ccNSO websites and wikis. It also will be posted as an announcement on the main ICANN org website.

5.4 Consultation with Supporting Organizations (SOs) and Advisory Committees (ACs)

For a Special IFR ICANN Bylaws Section 18.12(a)(iii) states:

“(iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR”

Thus, the SICT must gather statements from any ICANN Supporting Organization or Advisory Committee (where these were sought and provided). The SICT shall issue a call for input from the SOs and ACs as soon as possible but no later than one (1) week after the establishment of the SICT. The call for input shall include a summary of section 18 of the ICANN Bylaws and call out the applicable sub sections. The call shall request a response within not later than thirty (30) days.

5.5 Deciding Whether to Request a Public Comment Period

Per ICANN Bylaws Section 18.12(a)(iv):

“(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO Supermajority.”

Accordingly, the SICT shall decide whether to request/recommend a public comment period on the draft joint recommendation developed by the SICT that complies with the designated practice for public comment periods within ICANN. See: <https://www.icann.org/public-comments>. If it decides not to recommend a Public Comment Period, the SICT shall provide the final recommendation to the GNSO and ccNSO Councils. If the SICT decides to request a public comment period, subject to approval by the ICANN Organization, at the completion of the public comment period the SICT shall review the comments and staff shall post a public comment summary report.

5.6 Developing the Joint Recommendation

The SICT shall review:

1. The input and recommendations from the GNSO and ccNSO as separately developed based on their respective internal procedures;
2. Input, if any, received from the SOs and ACs;
3. Input, if any, from the Public Forum.

After analyzing the inputs, the SICT shall determine whether they can be reconciled on whether or not to initiate a Special IFR. If they can be reconciled, the SICT shall develop a draft joint recommendation for consideration by the GNSO and ccNSO Councils. If the input and recommendations cannot be reconciled, the GNSO and ccNSO Chairs shall issue a joint statement that they do not agree to jointly initiate a Special IFR. The statement shall be delivered to the ICANN Board of Directors, the EC Administration, and posted to the respective websites and wikis, including the main ICANN org website.

5.7 ccNSO and GNSO Council Votes

The GNSO and ccNSO Councils shall each conduct a vote on the SICT final recommendation. The recommendation will be either to initiate a Special IFR or not to initiate a Special IFR. Per Section 18.12(a)(iv) of the ICANN Bylaws, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3)) and (B) a GNSO Council Supermajority. If both the GNSO and ccNSO do not approve the initiation of a Special IFR, or if one approves and one does not approve, they shall issue a joint statement that they do not agree to jointly initiate a Special IFR. The statement shall be delivered to the ICANN Board of

Directors, the EC Administration, and posted to the organization's' respective websites and wikis.

If both the GNSO and ccNSO approve the initiation of a Special IFR, they shall issue a joint statement that they agree to jointly initiate a Special IFR. The statement shall be delivered to the ICANN Board of Directors, the EC Administration, and posted to the respective websites and wikis, including the main ICANN org website.