

Note to CWG	Response
<b>PTI Bylaws</b>	
<p><b>Section 5.2.3 – Qualifications (Page 4)</b>                      Only the qualification in Section 5.2.3.3 comes from the CWG Final Proposal. Please advise if the other qualifications in Sections 5.2.3 and 5.3, which come from Sections 7.3 and 7.4 of the ICANN Bylaws, are acceptable. Please note that the ICANN Bylaws also include criteria concerning cultural and geographic diversity.</p>	<p>Generally these are acceptable. No additional qualifications required.</p> <p>Additional language needs to be inserted to include appropriate diversity considerations. Possibly applied separately to ICANN and NomCom appointees.</p>
<p><b>Section 5.3.3 – Additional Qualifications (Page 5)</b>                      CWG to advise. If these limitations are appropriate, exceptions could be made for the initial directors for the first term. Please note that ICANN Board members are not disqualified in this Section 5.3, but see Section 5.5.3, which includes the ICANN-proposed definition of “independent” for purposes of the Nominating Committee Directors and disqualifies ICANN Board members from serving as Nominating Committee Directors.</p>	<p>These are acceptable.</p> <p>They do not seem to preclude the proposed interim directors Lise Fuhr &amp; Jonathan Robinson. To be confirmed.</p> <p>No additional qualifications required.</p>
<p><b>Section 5.4 – Election of a Chairperson (Page 5)</b>                      Please advise whether the Bylaws should provide for a Chairperson elected by the Board, and if a Chairperson is desired, whether the President, who we assume will be the PTI Manager (elected by ICANN), may serve as Chairperson. Section 7.6.1 currently provides that if there is no Chairperson, then the President will act as the Chairperson.</p>	<p>Chairperson is required.</p> <p>Chairperson must be elected by the board.</p> <p>Chairperson must not be the PTI manager.</p> <p>There is a preference that the Chairperson be a NomCom-appointed director if possible.</p>

<p>Under California law, the corporation must have the following officers: (i) a chair of the board or a president (and may have both), (ii) a secretary, and (iii) a CFO or treasurer (and may have both).</p>	<p>President may be PTI manager. If the President is a director, then the Chairperson should be a NomCom-appointed director. For the avoidance of doubt, the President could not hold both positions: President and Chairperson.</p>
<p><b>Section 5.5 – Terms Election of Successors (Page 5)</b> As structured, all directors (ICANN and Nominating Committee) will be elected annually for a one-year term. CWG to advise if any preference on length of terms (maximum of 4 years) and whether term limits will apply.</p>	<p>All directors elected for 2 year terms.  NomCom-appointed directors elected on alternating years. <i>Note: One (or both) interim directors may need to serve for more than one year in order to accommodate this.</i>  NomCom-appointed directors not to serve for more than 2 consecutive terms i.e. 4 years in total.</p>
<p><b>Section 5.5.3 – Terms Election of Successors (Page 5-6)</b> This is the ICANN-proposed definition of “independent” for purposes of the Nominating Committee Directors. Are there different/additional disqualifications that should be included? CWG to advise.</p>	<p>The provision that the NomCom-appointed director should not have been an ICANN employee for three years is a good one. In addition, this should be widened to a professional (paid for services) consultant to ICANN.</p>
<p><b>Section 5.5.2 – Removal (Page 6)</b> Under California law, the board may remove directors for missing a required number of meetings, if at the time a director is elected, the bylaws provide that a director may be removed for this reason.</p>	<p>Provision is reasonable provided it is included as may remove not must remove AND approval of member is required (provides an additional check / balance).</p>

<p>CWG to advise regarding inclusion of this provision and whether Member approval, which is optional, will be required.</p>	
<p><b>Section 5.6.2 – Removal (Page 7)</b>          Under California law, the board may remove directors for failure to meet any required director qualifications, if the bylaws prescribe qualifications for service as a director. CWG to advise regarding inclusion of this provision and whether Member approval, which is optional, will be required.</p>	<p>Provision is reasonable provided it is included as may remove not must remove AND approval of member is required (provides an additional check / balance).</p>
<p><b>Section 5.11.1 – Quorum (Page 9)</b>          To avoid the situation where there are no ICANN Directors or no Nominating Committee Directors present at the meeting, we recommend that at least one ICANN Director and one Nominating Committee Director be required for purposes of a quorum.</p>	<p>Quorum must include at least one ICANN director and one NomCom-appointed director.</p>
<p><b>Section 5.11.3 – When a Greater Vote is Required for Valid Board Action (Page 9)</b>          Consider whether a higher threshold than three of five (i.e., four of five) should be required for these actions, which would ensure that the PTI Manager and either the ICANN Directors or the Nominating Committee Directors could not act without the other two</p> <p><b>Section 6.1 – Committees of Directors (Page 12)</b>          See footnote 16, above, regarding the voting threshold for the creation of committees and certain other actions.</p>	<p>Board approval to require the higher threshold of four of the five directors AND two of the directors must be the NomCom-appointed directors.</p> <p>Board approval to require the higher threshold of four of the five directors AND two of the directors must be the NomCom-appointed directors.</p>

<p><b>Section 5.16 – Fees and Compensation of Directors (Page 11)</b> Typically, directors of wholly-owned subsidiaries are not compensated, but may want to consider compensation for the two Nominating Committee Directors. CWG to advise.</p>	<p>ICANN Directors undertake their duties as part of their role and are NOT to be compensated in addition for this role. NomCom-appointed directors are NOT compensated for their work.</p> <p>NomCom-appointed directors are to be reimbursed reasonable expenses (including travel) incurred solely in connection with their work on the PTI board.</p>
<p><b>Section 6.3 – Quorum Rules for Board Committees (Page 13)</b> CWG to advise whether to require at least one ICANN Director and one Nominating Committee Director for purposes of a Committee quorum.</p>	<p>See 5.11.1 above (Quorum must include at least one ICANN director and one NomCom-appointed director).</p>
<p><b>Section 6.6 – Advisory Committees (Page 14)</b> CWG to advise whether the creation of advisory committees will be permitted. The ICANN Bylaws permit the ICANN Board to create advisory committees, and GAC, ALAC, SSAC and RSSAC are established under this authority</p>	<p>Advisory committees are not appropriate or necessary in the case of the PTI board.</p>
<p><b>Section 7.1 – Officers (Page 14)</b> CWG to advise (i) whether to permit additional officers at the discretion of the Board (and, if so, with or without Member approval) and (ii) whether the appointment/removal of officers (other than the President) will require Member approval.</p>	<p>The Corporation will not need additional offices therefore the board does not need this capability.</p>

<p><b>Section 7.6.1 – President (Page 15)</b>          CWG to advise: “The President may delegate his or her responsibilities and powers subject to the control of the Board. He or she shall have such other powers and duties as may be prescribed by the Board [, with the approval of the Member,] or these Bylaws.”</p>	<p>Board may approve delegation of responsibilities or powers of President.</p> <p>Member approval NOT required for the prescription of additional duties by the board to the President.</p> <p>Member approval required for the prescription of additional powers by the board to the President.</p>
<p><b>Section 9.2 – Annual Budget (Page 18)</b>          CWG to advise regarding additional public comment periods. [After reviewing the comments submitted during the public comment period, the Board may direct the Corporation to post a revised draft of the Annual Budget on the Website and may direct the Corporation to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN’s public comment processes.]</p> <p><b>Section 9.2 – Annual Budget (Page 18)</b>          Paragraph 163 of the CWG Final Proposal provides that “PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services.” Therefore, additional time will need to be factored in for budget development, public comment and PTI Board approval.</p>	<p>This seems like a reasonable provision to have in place providing that it remains at the discretion of the board.</p>
<p><b>Section 9.3 – Strategic Plan (Page 19)</b>          CWG to advise if the strategic plan should follow the same review process as the budget (i.e., consultation with</p>	

<p>SOs/ACs/stakeholder groups and posting for public comment before board approval).</p>	<p>Strategic Plan to be prepared as part of the process (precursor to) of preparing the budget and therefore to be subject to the same process as the budget.</p>
<p><b>Article 12 – Amendments (Page 21)</b>                  For Board approval of bylaw amendments, CWG to consider whether a higher threshold than three of five (i.e., four of five) should be required, which would ensure that the PTI Manager and either the ICANN Directors or the Nominating Committee Directors could not act without the other two. Note that ICANN's ability to amend certain PTI Bylaw provisions is constrained through the ICANN Bylaws.</p>	<p>Board approval of bylaw amendments requires the higher threshold of four of the five directors AND two of the directors must be the NomCom-appointed directors.</p>
<p><b>PTI Articles of Incorporation –</b></p>	
<p><b>Article 13 (Page 2)</b>                  Consider whether a higher threshold than three of five should be required. For example, four of five ensures that the PTI Manager and either the ICANN Directors or the Independent Directors could not act without the other two.</p>	<p>Board approval of bylaw amendments requires the higher threshold of four of the five directors AND two of the directors must be the NomCom-appointed directors.</p>