

Note: appended the relevant bylaw sections to the end of this file to make life a little easier.

Question or Clarification Requested	Reference in the Bylaws	Response
IFR – Article 18, starting on page 87		
<p>13. Clarify whether the gTLD and ccTLD registry operators are the same as the “consumers of the IANA naming functions” whose needs must be considered by the IFRT (Paragraph 276 of the CWG Proposal).</p>		<p>While the Registries are defined as the direct customers, the GNSO and ccNSO are the customers given their policy recommending authority. One can also argue that all users of the DNS are consumers of the IANA naming functions.</p>
<p>14. Is it appropriate for language to be added to try to align some of the review process to the AoC reviews? A proposed inclusion is: “Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT’s report shall also propose timelines for implementing the IFRT’s recommendations. The IFRT shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.”</p>		<p>Yes agree seems to make sense although it would be useful to know where the proposed language is being drawn from specifically</p>

<p>15. Confirm that we can add a Bylaw that requires appointing organizations to use reasonable efforts to fill vacancies on the IFRT within a month.</p>		<p>yes</p>
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Special IFR – Article 18, starting on page 87

<p>16. The CWG response chart provided on March 10, 2016 stated the following in response to a question around the method of consultation between SOs and ACs when determining whether or not to initiate a Special IFR: “CWG-Stewardship has chosen to reference the mechanisms developed by the CCWG-Accountability, and these can be cross-referenced as part of implementation.” The CCWG Final Proposal contemplates a community forum mechanism, as well as optional conference calls; clarify which consultation mechanism CWG expects SOs/ACs to follow and whether such mechanism is to be referred to in the Bylaws or left to implementation outside of the Bylaws.</p>		<p>Why would this be any different from the IFR? The only intended difference between the two is the manner of initiation.</p>
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<p>17. Confirm that the following insertion is acceptable, that would require each recommendation of the IFRT to be “directly related and limited</p>		<p>Yes although suggest an insertion that qualifies the use of the word performance by noting the IFRT’s responsibilities for as listed in section 18.3. a - k</p>
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<p>to remediating the PTI Performance Issue.” The CWG Proposal provides that there is no prescribed outcome for an IFR (Paragraph 126).]</p>		
<p>SCWG – Article 19, starting on page 98</p>		
<p>18. On a decision to create an SCWG, confirm that the EC functions as a reconsideration of the Board decision (meaning that if the Board rejects the creation of the SCWG, the EC can reject that decision and escalate).</p>		<p>yes</p>
<p>19. Given that the Board liaison is a role that is becoming instituted in Cross-Community Working Group practices, is it appropriate for the Board be able to appoint a liaison to a SCWG. This is not contemplated in the CWG Proposal.</p>		<p>yes</p>
<p>20. Clarify whether every member of the SCWG should have experience managing an RFP process, or whether a minimum number of SCWG members (e.g., four) with experience managing or participating in an RFP process would suffice. <i>[Paragraph 396 of the CWG Proposal provides that “To the extent possible, it is recommended that individuals with experience</i></p>		<p>A specific number is not required, especially since there is no certainty that a RFP will be created. If any number is included, suggest “there should be at least 1 member experienced in managing an RFP”.</p>

<i>managing an RFP process be appointed to the SCWG.”]</i>		
21. Confirm that we can add a Bylaw that requires appointing organizations to use reasonable efforts to fill vacancies on the SCWG within a month.		yes
22. Consider whether an absolute majority of SCWG members should be required in cases where consensus cannot be reached, which would ensure at least 50+1% are in favor of the recommendation.		yes

Other comments on the relevant Articles

If in reviewing these articles you find other issues, please list them below.

Reference Article and section	Comment
18.2	And IFR should be delayed until one year after the end of the SIFR. Does not make sense to hold both an IFR and SIFR at the same time
18.4 c	“as reasonably determined by the IFRT” is repeated. Does it need to be said twice?
18.4 a	Has the same redaction problem we find in other reviews. This should be treated in the same way as confidential information is treated in ATRT, i.e. signature of NDA (ref Confidential Disclosure to Review Teams 4.6.a.vi). May need to refer to EC right of inspection as appeal mechanism iif NDA is not a possible solution.
18.8c	Why are the liaisons involved in selecting the IFRT. Does not seem

	appropriate.
18.9 a	“which is where a small minority disagrees, but most agree.” This almsot makes it seem like at least one must disagree for consensus. Could ‘disagree’ be changed to ‘may disagree’
18.9 a	“ If consensus cannot be reached with respect to a particular issue, actions by the majority of all of the members of the IFRT.” Clause seems to be missing a verb, for example “actions may be taken by”
19.5.xvi d iii	Why 4 with RFP experience. Why is at least one not sufficient. Or maybe two.

--- For Reference - the new articles

ARTICLE 18 IANA NAMING FUNCTION REVIEWS

Section 18.1.IANA NAMING FUNCTION REVIEW

The Board, or an appropriate committee thereof, shall cause periodic and/or special reviews (each such review, an “IFR”) of PTI’s performance of the IANA naming function against the contractual requirements set forth in the IANA Naming Function Contract and the IANA Naming Function SOW to be carried out by an IFRT established in accordance with Article 18, as follows:

- (a) Regularly scheduled periodic IFRs, to be conducted pursuant to Section 18.2 below (“Periodic IFRs”); and
- (b) IFRs that are not Periodic IFRs, to be conducted pursuant to Section 18.15 below (“Special IFRs”).

18.2.FREQUENCY OF PERIODIC IFRS

- (a) The first periodic IFR shall be convened no later than [1 October 2018].
- (b) Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened.
- (c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this Section 18.2, the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) 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 (ii) a GNSO Supermajority. Any decision by the ccNSO and GNSO to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months.

Section 18.3.IFR RESPONSIBILITIES

For each Periodic IFR, the IFRT shall:

- (a) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract in relation to the needs of its direct customers and the expectations of the broader ICANN community, and determine whether to make any recommendations with respect to PTI's performance;
- (b) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract and IANA Naming Function SOW;
- (c) Review the IANA Naming Function SOW and determine whether to recommend any amendments to the IANA Naming Function Contract and IANA Naming Function SOW to account for the needs of gTLD and ccTLD registry operators and the community at large;
- (d) Review and evaluate the openness and transparency procedures of PTI and any oversight structures for PTI's performance, including reporting requirements and budget transparency;
- (e) Review and evaluate the performance and effectiveness of the EC with respect to actions taken by the EC, if any, with pursuant to Section 16.2, Section 18.5, Section 18.6, Section 18.12, Section 19.1, Section 19.4, Section 22.4(b) and Annex D;
- (f) Review and evaluate the performance of the IANA naming function according to established service level expectations during the IFR period being reviewed and compared to the immediately preceding Periodic IFR period;
- (g) Review and evaluate whether there are any systemic issues that are impacting PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;
- (h) Initiate public comment periods and other processes for community input on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (such public comment periods shall comply with the designated practice for public comment periods within ICANN);
- (i) Consider input from the CSC and the community on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;
- (j) Identify process or other areas for improvement in the performance of the IANA naming function under the IANA Naming Function Contract and IANA Naming Function SOW and the performance of the CSC and the EC as it relates to oversight of PTI; and
- (k) Consider and assess any changes implemented since the immediately preceding IFR and their implications for the performance of PTI under the IANA Naming Function Contract and IANA Naming Function SOW

Section 18.4.IFR REQUIRED INPUTS

In conducting an IFR, the IFRT shall review and analyze the following information:

- (a) Reports provided by PTI pursuant to the IANA Naming Function Contract and/or IANA Naming Function SOW during the IFR period being reviewed, any portion of which may be

redacted (i) that reflects privileged advice from legal counsel; (ii) includes PTI or ICANN trade secrets; (iii) where disclosure to the IFRT would otherwise constitute a breach by PTI or ICANN of a binding contractual obligation or legal requirement to which PTI or ICANN is subject; or (iv) if disclosed would present a material risk of negative impact on the security, stability or resiliency of the DNS;

(b) Reports provided by the CSC in accordance with the CSC Charter during the IFR period being reviewed;

(c) Community inputs through public consultation procedures as reasonably determined by the IFRT, including, among other things as reasonably determined by the IFRT, public comment periods, input provided at in-person sessions during ICANN meetings, responses to public surveys related to PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW, and public inputs during meetings of the IFRT;

(d) Recommendations for technical, process and/or other improvements relating to the mandate of the IFR provided by the CSC or the community; and

(e) Results of any site visit conducted by the IFRT, which shall be conducted in consultation with ICANN (i) upon reasonable notice, (ii) in a manner so as to not affect PTI's performance under the IANA Naming Function Contract or the IANA Naming Function SOW and (iii) pursuant to procedures and requirements reasonably developed by ICANN and reasonably acceptable to the IFRT. Any such site visit shall be limited to matters reasonably related to the IFRT's responsibilities pursuant to Section 18.3.

Section 18.5.IFR RESULTS AND RECOMMENDATIONS

(a) The results of the IFR are not limited and could include a variety of recommendations or no recommendation; provided, however, that any recommendations must directly relate to the matters discussed in Section 18.2(c) and comply with this Section 18.6.

(b) Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. [Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT's report shall also propose timelines for implementing the IFRT's recommendations. The IFRT shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.]

(c) In any case where a recommendation of an IFRT focuses on a service specific to gTLD registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the Registries Stakeholder Group. In any case where a recommendation of an IFRT focuses on a service specific to ccTLD registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the ccNSO

(d) Notwithstanding anything herein to the contrary, the IFR shall not have the authority to review or make recommendations relating to policy or contracting issues that are not included in the IANA Naming Function Contract or the IANA Naming Function SOW, including, without

limitation, policy development, adoption processes or contract enforcement measures between contracted registries and ICANN.

Section 18.6.RECOMMENDATIONS TO AMEND THE IANA NAMING FUNCTION CONTRACT, IANA NAMING FUNCTION SOW OR CSC CHARTER

(a) The IFRT may recommend amendments to the IANA Naming Function Contract, IANA Naming Function SOW and/or the CSC Charter. The IFRT shall, at a minimum, take the following steps before an amendment to either the IANA Naming Function Contract, IANA Naming Function SOW or CSC Charter is proposed:

- (i) Consult with ICANN and PTI;
- (ii) Consult with the CSC;
- (iii) Conduct a public input session for ccTLD and gTLD registry operators; and
- (iv) Seek public comment on the amendments that are under consideration by the IFRT through a public comment period that complies with the designated practice for public comment periods within ICANN.

(b) A recommendation of an IFRT for a Periodic IFR that would amend the IANA Naming Function Contract or IANA Naming Function SOW shall only become effective if, with respect to each such recommendation (each, an "IFR Recommendation"), each of the following occurs:

- (i) The 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 IFR Recommendation; and

- (iii) The EC has not rejected the IFR Recommendation pursuant to Section 18.6(c).

(c) Promptly after the Board approves an IFR Recommendation (an "IFR Recommendation Approval"), the Secretary shall provide a Board Notice to the EC Chairs Council, which Board Notice shall enclose a copy of the IFR Recommendation that is the subject of the IFR Recommendation Approval. ICANN shall post the Board Notice on the Website promptly following the delivery of the Board Notice to the EC Chairs Council. The EC Chairs Council shall promptly notify the Decisional Participants and shall commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A IFR Recommendation shall become effective upon the earliest to occur of the following:

(A) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IFR Recommendation that is the subject of the IFR Recommendation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(c)(i) of Annex D) relating to such IFR Recommendation Approval and the EC shall not thereafter challenge the effectiveness of such IFR Recommendation;

(B) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with

Section 2.2(d) of Annex D, in which case the IFR Recommendation that is the subject of the IFR Recommendation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such IFR Recommendation Approval and the EC shall not thereafter challenge the effectiveness of such IFR Recommendation; and

(C) An EC Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.4 of Annex D, in which case the IFR Recommendation that is the subject of the IFR Recommendation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such IFR Recommendation Approval and the EC shall not thereafter challenge the effectiveness of such IFR Recommendation.

(ii) An IFR Recommendation that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(d) For the avoidance of doubt, Section 18.6(c) shall not apply when the Board acts (or fails to act) in a manner that is consistent with an IFR Recommendation unless such IFR Recommendation relates to a Separation Process as described in Section 19.

(e) Timelines for implementing any amendments to the IANA Naming Function Contract or IANA Naming Function SOW shall be reasonably agreed between the IFRT, ICANN and PTI.

(f) A recommendation of an IFRT that would amend the CSC Charter shall only become effective if approved pursuant to Section 17.3(d).

Section 18.7.COMPOSITION OF IFR TEAMS

Each IFRT shall consist of the following members or liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(a) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives

(b) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the regional ccTLD organizations (i.e., AFTLD, APTLD, LACTLD, and CENTR) in making its recommendation;

(c) Two representatives appointed by the Registries Stakeholder Group;

(d) One representative appointed by the Registrars Stakeholder Group;

(e) One representative appointed by the Commercial Stakeholder Group;

(f) One representative appointed by the Non-Commercial Stakeholder Group;

(g) One representative appointed by the GAC;

(h) One representative appointed by the SSAC;

(i) One representative appointed by the RSSAC;

(j) One representative appointed by the ALAC;

(k) One liaison appointed by the CSC;

(l) One liaison who may be appointed by the ASO; and

(m) One liaison who may be appointed by the IAB.

(n) The IFRT shall also include an unlimited number of non-member, non-liaison participants

(o) The IFRT shall not be a standing body. A new IFRT shall be constituted for each IFR and the IFRT shall automatically dissolve following the end of the process for approving such IFRT's IFR Recommendations pursuant to Section 18.6.

Section 18.8.MEMBERSHIP; ELECTION OF CO-CHAIRS, AND LIAISONS

(a) All candidates for appointment to the IFRT as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison to the IFRT, which shall state: (i) why the candidate is interested in becoming involved in the IFRT, (ii) what particular skills the candidate would bring to the IFRT, (iii) the candidate's knowledge of the IANA functions, (iv) the candidate's understanding of the purpose of the IFRT, and (v) that the candidate understands the time necessary to participate in the IFR process and can commit to the role.

(b) Members, liaisons and participants of the IFRT shall disclose to ICANN and the IFRT any conflicts of interest with a specific complaint or issue under review. The IFRT may exclude from the discussion of a specific complaint or issue any member deemed by the majority of IFRT members to have a conflict of interest. The co-chairs of the IFRT shall record any such conflict of interest in the minutes of the IFRT.

(c) To the extent reasonably possible, the appointing organizations for the IFRT members and liaisons shall work together to achieve an IFRT that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the IFRT should include members from each ICANN Geographic Region and the ccNSO and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN Geographic Region.

(d) The IFRT shall be led by two co-chairs: one appointed by the GNSO from one of the GNSO IFRT members and one appointed by the ccNSO from one of the ccTLD IFR members.

(e) The PTI Board shall select a PTI staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and PTI. The Board shall select an ICANN staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and ICANN.

(f) Liaisons to the IFRT are not members of or entitled to vote at the IFRT, but otherwise are entitled to participate on equal footing with members of the IFRT.

(g) Other participants are entitled to participate in the IFRT, but are not entitled to vote

(h) Removal and replacement of IFRT members and liaisons.

(i) The IFRT members and liaisons may be removed from the IFRT by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the IFRT.

(ii) [A vacancy on the IFRT shall be deemed to exist in the event of the death, resignation or removal of any IFRT member or liaison. Vacancies shall be filled by the organization that appointed such IFRT member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the IFRT co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.]

Section 18.9.MEETINGS

- (a) All actions of the IFRT shall be taken by consensus of the IFRT, which is where a small minority disagrees, but most agree. If consensus cannot be reached with respect to a particular issue, actions by the majority of all of the members of the IFRT.
- (b) Any members of the IFRT not in favor of an action (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such action, which shall be included in the IFRT minutes and/or report, as applicable.
- (c) IFRT meetings, deliberations and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.
- (d) The IFRT shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each IFRT meeting. Recordings and transcripts of meetings, as well as mailing lists, shall also be posted to the Website.

Section 18.10.COMMUNITY REVIEWS AND REPORTS

- (a) The IFRT shall seek community input as to the issues relevant to the IFR through one or more public comment periods that shall comply with the designated practice for public comment periods within ICANN and through discussions during ICANN's public meetings in developing and finalizing its recommendations and any report.
- (b) The IFRT shall provide a draft report of its findings and recommendations to the community for public comment. The public comment period is required to comply with the designated practice for public comment periods within ICANN.
- (c) After completion of the IFR, the IFRT shall submit its final report containing its findings and recommendations to the Board. ICANN shall thereafter promptly post the IFRT's final report on the Website.

Section 18.11.ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for each IFRT to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the IFRT

Section 18.12.SPECIAL IFRS

- (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 (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 consider the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall conduct 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, 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.

(b) Each Special IFR shall be conducted by an IFRT and shall follow the same procedures and requirements applicable to Periodic IFRs as set forth in this Section 18, except that:

(i) The scope of the Special IFR and the related inputs that are required to be reviewed by the IFRT shall be focused primarily on the PTI Performance Issue, its implications for overall IANA naming function performance by PTI and how to resolve the PTI Performance Issue;

(ii) The IFRT shall review and analyze the information that is relevant to the scope of the Special IFR; and

(iii) Each recommendation of the IFRT relating to the Special IFR, including but not limited to any recommendation to initiate a Separation Process (as defined in Section 19.1), [must be related to remediating the PTI Performance Issue] shall include proposed remedial procedures and describe how those procedures are expected to address the PTI Performance Issue.

(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 decision of the Board with respect to the Special IFR Recommendation pursuant to the procedures described in Section 18.12(d) below.

(d) Promptly after the Board approves a Special IFR Recommendation (a "Special IFR Recommendation Approval"), the Secretary shall provide a Board Notice to the EC Chairs Council, which Board Notice shall enclose a copy of the Special IFR Recommendation that is the subject of the Special IFR Recommendation Approval. ICANN shall post the Board Notice on the Website promptly following the delivery of the Board Notice to the EC Chairs Council. The EC Chairs Council shall promptly notify the Decisional Participants and shall commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A Special IFR Recommendation shall become effective upon the earliest to occur of the following:

(A) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Special IFR Recommendation that is the subject of the Special IFR Recommendation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(c)(i) of Annex D) relating to such Special IFR Recommendation Approval and the EC shall not thereafter challenge the effectiveness of such Special IFR Recommendation; (B) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Special IFR Recommendation that is the subject of the Special IFR Recommendation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such Special IFR Recommendation Approval and the EC shall not thereafter challenge the effectiveness of such Special IFR Recommendation; and (C) An EC Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.4 of Annex D, in which case the Special IFR Recommendation that is the subject of the Special IFR Recommendation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such Special IFR Recommendation Approval and the EC shall not thereafter challenge the effectiveness of such Special IFR Recommendation.

(ii) A Special IFR Recommendation that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) For the avoidance of doubt, Section 18.12(d) shall not apply when the Board acts (or fails to act) in a manner that is consistent with a Special IFR Recommendation unless such Special IFR Recommendation relates to a Separation Process as described in Section 19.

Section 18.13. PROPOSED SEPARATION PROCESS

The IFRT conducting either a Special IFR or Periodic IFR may, upon conclusion of a Special IFR or Periodic IFR, as applicable, determine that a Separation Process is necessary and, if so, it shall recommend the creation of an SCWG pursuant to Article 19.

ARTICLE 19 IANA NAMING FUNCTION SEPARATION PROCESS

Section 19.1. ESTABLISHING AN SCWG

(a) An "IANA Naming Function Separation Process" is the process initiated in accordance with this Article 19 pursuant to which PTI may cease to perform the IANA naming function including, without limitation, the initiation of a request for proposal to select an operator to perform the IANA naming function instead of PTI ("IANA Naming Function RFP"), the selection of an IANA naming function operator other than PTI, termination or non-renewal of the IANA Naming Function Contract, and/or divestiture, or other reorganization of PTI by ICANN.

(b) The Board shall establish an SCWG if each of the following occurs:

- (i) The IFRT conducting either a Special IFR or Periodic IFR, upon conclusion of a Special IFR or Periodic IFR, as applicable, has recommended that an IANA Naming Function Separation Process is necessary and has recommended the creation of an SCWG;
- (ii) The creation of the SCWG 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;
- (iii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the creation of the SCWG (an "SCWG Creation Approval"). A determination by the Board to not approve the creation of an SCWG, where such creation has been approved by the ccNSO and GNSO Councils pursuant to Section 19.1(b)(ii), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP Recommendation that is supported by a GNSO Supermajority; and
- (iv) The EC has not rejected the decision of the Board with respect to the creation of an SCWG, including any decision to not approve the creation of an SCWG or failure by the Board to take action with respect to such matter, pursuant to the procedures described in Section 19.1 (c) below.

(c) Promptly after the Board approves a SCWG Creation Approval, the Secretary shall provide a Board Notice to the EC Chairs Council, which Board Notice shall enclose a copy of SCWG Creation Approval. ICANN shall post the Board Notice on the Website promptly following the delivery of the Board Notice to the EC Chairs Council. The EC Chairs Council shall promptly notify the Decisional Participants and shall commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A Special IFR Recommendation shall become effective upon the earliest to occur of the following:

(A) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the creation of the SCWG that is the subject of the SCWG Creation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(c)(i) of Annex D) relating to such SCWG Creation Approval and the EC shall not thereafter challenge the effectiveness of the creation of such SCWG;

(B) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the creation of the SCWG that is the subject of the SCWG Creation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such Special IFR Recommendation Approval and the EC shall not thereafter challenge the effectiveness of the creation of such SCWG; and

(C) An EC Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.4 of Annex D, in which case creation of the SCWG that is the subject of the SCWG Creation Approval shall

be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such SCWG Creation Approval and the EC shall not thereafter challenge the effectiveness of the creation of such SCWG.

(ii) A Special IFR Recommendation that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

Section 19.2.SCWG RESPONSIBILITIES

The responsibilities of the SCWG shall be as follows:

(a) The SCWG shall determine how to resolve the PTI Performance Issue(s) which the IFRT that conducted the Special IFR identified as triggering formation of this SCWG.

(b) If the SCWG recommends the issuance of an IANA Naming Function RFP, the SCWG shall:

(i) Develop IANA Naming Function RFP guidelines and requirements for the performance of the IANA naming function, in a manner consistent with ICANN's publicly available procurement guidelines (as in effect immediately prior to the formation of the SCWG); and

(ii) Solicit input from ICANN and the global internet community on requirements to plan and participate in the IANA Naming Function RFP process.

(c) If pursuant to Section 19.4(c) below, an SCWG Recommendation to issue the IANA Naming Function RFP is approved, the SCWG, in consultation with ICANN, shall:

(i) Issue the IANA Naming Function RFP;

(ii) Review responses from interested candidates to the IANA Naming Function RFP, which may be received from PTI and/or any other entity or person; and

(iii) Recommend the entity that ICANN should contract with to perform the IANA naming function.

(d) If the SCWG recommends an IANA naming function Separation Process other than the issuance of an IANA Naming Function RFP, the SCWG shall develop recommendations to be followed with respect to that process and its implementation consistent with the terms of this Article 19. The SCWG shall monitor and manage the implementation of such IANA Naming Function Separation Process.

Section 19.3.COMMUNITY REVIEWS AND REPORTS

(a) The SCWG shall seek community input through one or more public comment periods (such public comment period shall comply with the designated practice for public comment periods within ICANN) and may recommend discussions during ICANN's public meetings in developing and finalizing its recommendations and any report.

(b) The SCWG shall provide a draft report of its findings and recommendations to the community after convening of the SCWG, which such draft report will be posted for public comment on the Website. The SCWG may post additional drafts of its report for public comment until it has reached its final report.

(c) After completion of its review, the SCWG shall submit its final report containing its findings and recommendations to the Board. ICANN shall promptly post the SCWG's final report on the Website.

Section 19.4.SCWG RECOMMENDATIONS

(a) The recommendations of the SCWG are not limited and could include a variety of recommendations or a recommendation that no action is required; provided, however, that any recommendations must directly relate to the matters discussed in Section 19.2 and comply with this Section 19.4.

(b) [ICANN shall not implement an SCWG recommendation (including a Names RFP Recommendation (as defined below) unless, with respect to each such recommendation (each, an "SCWG Recommendation"), each of the following occurs:

(i) The SCWG 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 SCWG Recommendation (an "SCWG Recommendation Approval"). A determination by the Board to not approve an SCWG Recommendation, where such SCWG Recommendation has been approved by the ccNSO and GNSO Councils pursuant to Section 19.4(b)(ii), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP Recommendation that is supported by a GNSO Supermajority; and

(iii) The EC has not rejected the decision of the Board with respect to the SCWG Recommendation, including any decision to not approve the SCWG Recommendation or failure by the Board to take action with respect to such matter, pursuant to the procedures described in Section 19.4 (c) below.

(c) Promptly after the Board approves a SCWG Recommendation Approval, the Secretary shall provide a Board Notice to the EC Chairs Council, which Board Notice shall enclose a copy of the SCWG Recommendation that is the subject of the SCWG Recommendation Approval. ICANN shall post the Board Notice on the Website promptly following the delivery of the Board Notice to the EC Chairs Council. The EC Chairs Council shall promptly notify the Decisional Participants and shall commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A SCWG Recommendation shall become effective upon the earliest to occur of the following:

(A) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Recommendation that is the subject of the SCWG Recommendation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(c)(i) of Annex D) relating to such SCWG Recommendation Approval and the EC shall not thereafter challenge the effectiveness of such SCWG Recommendation;

(B) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Recommendation that is the subject of the SCWG Recommendation Approval shall be in full force and effect as of the date immediately

following the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such SCWG Recommendation Approval and the EC shall not thereafter challenge the effectiveness of such SCWG Recommendation; and

(C) An EC Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC Chairs Council to the Secretary pursuant to and in compliance with Section 2.4 of Annex D, in which case the SCWG Recommendation that is the subject of the SCWG Recommendation Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such SCWG Recommendation Approval and the EC shall not thereafter challenge the effectiveness of such SCWG Recommendation.

(ii) A SCWG Recommendation that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(d) ICANN shall absorb the costs relating to recommendations made by the SCWG, including, without limitation, costs related to the process of selecting or potentially selecting a new operator for the IANA naming function and the operating costs of the successor operator that are necessary for the successor operator's performance of the IANA naming function as ICANN's independent contractor. ICANN shall not be authorized to raise fees from any TLD registry operators to cover the costs associated with implementation of any SCWG Recommendations that specifically relate to the transition to a successor operator. For avoidance of doubt, this restriction shall not apply to collecting appropriate fees necessary to maintain the ongoing performance of the IANA naming function, including those relating to the operating costs of the successor operator.

(e) In the event that (i) an SCWG Recommendation that selects an entity (other than PTI) as a new operator of the IANA naming function is approved pursuant to Section 19.4(b) and (ii) the EC does not reject such SCWG Recommendation pursuant to Section 19.4(c), ICANN shall enter into a contract with the new operator on substantially the same terms recommended by the SCWG and approved as part of such SCWG Recommendation ("Successor IANA Naming Function Contract").

(f) As promptly as practical following the approval of an SCWG Recommendation in accordance with this Section 19.4, ICANN shall take all steps reasonably necessary to effect such approved SCWG Recommendation as soon as practicable.

Section 19.5. SCWG COMPOSITION

(a) The SCWG shall select and appoint members in accordance with their own rules and procedures. Each SCWG shall consist of:

(i) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives;

(ii) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the regional ccTLD organizations (i.e., AFTLD, APTLD, LACTLD and CENTR) in making its appointment;

(iii) Three representatives appointed by the Registries Stakeholder Group;

(iv) One representative appointed by the Registrars Stakeholder Group;

- (v) One representative appointed by the Commercial Stakeholder Group;
- (vi) One representative appointed by the Non-Commercial Stakeholder Group;
- (vii) One representative appointed by the GAC;
- (viii) One representative appointed by the SSAC;
- (ix) One representative appointed by the RSSAC;
- (x) One representative appointed by the ALAC;
- (xi) One liaison appointed by the CSC;
- (xii) One liaison appointed by the IFRT that conducted the Special IFR or periodic IFR, as applicable, that recommended the creation of the SCWG, who shall be named in the IFRT's recommendation to convene the Special IFR;
- (xiii) One liaison who may be appointed by the ASO;
- (xiv) One liaison who may be appointed by the IAB; and
- (xv) One liaison who may be appointed by the Board.
- (xvi) The SCWG may also include an unlimited number of non-member, non-liaison participants.

(b) All candidates for appointment to the SCWG as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison, which shall state (i) why the candidate is interested in becoming involved in the SCWG, (ii) what particular skills the candidate would bring to the SCWG, (iii) the candidate's knowledge of the IANA naming function, (iv) the candidate's understanding of the purpose of the SCWG, and (v) that the candidate understands the time necessary to participate in the SCWG process and can commit to the role.

(c) Members and liaisons of the SCWG shall disclose to ICANN and the SCWG any conflicts of interest with a specific complaint or issue under review. The SCWG may exclude from the discussion of a specific complaint or issue any member, liaison or participant deemed by the majority of SCWG members to have a conflict of interest. The co-chairs of the SCWG shall record any such conflict of interest in the minutes of the SCWG.

(d) To the extent reasonably possible, the appointing organizations for SCWG members and liaisons shall work together to:

- (i) achieve an SCWG that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the SCWG should include members from each ICANN Geographic Region and the ccNSO and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN Geographic Region;
- (ii) ensure that the SCWG is comprised of individuals who are different from those individuals who comprised the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, other than the liaison to the IFRT appointed by the CSC; and
- (iii) [seek to appoint at least [four] persons as representatives of the SCWG with experience managing or participating in the RFP processes].

(e) ICANN shall select an ICANN staff member and a PTI staff member to serve as points of contact to facilitate formal lines of communication between the SCWG and ICANN and the

SCWG and PTI. Communications between the SCWG and the ICANN and PTI points of contact shall be communicated by the SCWG co-chairs.

(f) The SCWG shall not be a standing body. Each SCWG shall be constituted when and as required under these Bylaws and shall dissolve following the end of the process for approving such SCWG's SCWG Recommendations pursuant to Section 19.4(c).

Section 19.6.ELECTION OF CO-CHAIRS AND LIAISONS

(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (iii)-(iv) of Section 19.5(a) and one appointed by the ccNSO from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a).

(b) Liaisons to the SCWG shall not be members of or entitled to vote on any matters before the SCWG, but otherwise shall be entitled to participate on equal footing with SCWG members.

(c) Removal and replacement of SCWG members and liaisons

(i) The SCWG members and liaisons may be removed from the SCWG by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the SCWG.

(ii) A vacancy on the SCWG shall be deemed to exist in the event of the death, resignation or removal of any SCWG member or liaison. Vacancies shall be filled by the organization that appointed such SCWG member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the SCWG co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 19.7.MEETINGS

(a) The SCWG shall act by consensus, which is where a small minority disagrees, but most agree, or if consensus cannot be reached with respect to a particular matter or issue, actions by the majority of all of the members of the SCWG.

(b) Any members of the SCWG not in favor of an action (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such action, which shall be included in the SCWG minutes and/or report, as applicable.

(c) SCWG meetings and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The SCWG shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each SCWG meeting, and no later than five business days following the meeting.

(e) Except as otherwise provided in these Bylaws, the SCWG shall follow the guidelines and procedures applicable to ICANN Cross Community Working Groups that will be publicly available and may be amended from time to time.

Section 19.8.ADMINISTRATIVE SUPPORT

ICANN shall provide administrative and operational support necessary for the SCWG to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the SCWG.

Section 19.9.CONFLICTING PROVISIONS

In the event any SCWG Recommendation that is approved in accordance with this Article 19 requires ICANN to take any action that is inconsistent with a provision of the Bylaws (including any action taken in implementing such SCWG Recommendation), the requirements of such provision of these Bylaws shall not apply to the extent of that inconsistency