

From: CCWG Pending Questions for Bylaws Coordination Group to be revisited on 11 April 2016, received from Bernie Turcotte by email April 8, 2016, 2:35 PM Pacific time

29. On NomCom Board member removals, should the GAC Carve-out only apply if the Board member is subject to the removal process because of a vote in support of a GAC Consensus Resolution?

NOTE: Request to have Lawyers redraft question to properly map to the CCWG report and not refer to the carve out.

CCWG Original Response 5 April:

No cause is needed for the removal of any Board member, regardless whether it is a NomCom Board member or not. Only an explanation needs to be offered. Therefore, no decision by the Board member is challenged with the removal procedure. As a consequence, the GAC carve-out should not apply to NomCom Board member removals.

CCWG Revised Response 11 April: TBD

REDRAFTED:

29a. On NomCom Board member removals, Annex D, Section 3.1(a) of the draft Bylaws provides for the possibility that a Nominating Committee Director Removal Petition could cite a GAC Consensus Board Resolution as part of the rationale for removal. (See also 3.1(c)(i)(E) and 3.1(g)(i and ii) for implementation of the resulting GAC carve-out in that case.) After discussion with the CCWG and among counsel, we conclude that this is beyond the scope of the GAC carve-out envisioned in the Proposal. We therefore recommend that this possibility and the related implementation of the GAC carve-out be deleted, so that GAC would be entitled to fully engage as a Decisional Participant in decisions by the EC regarding NomCom Board member removals. While a rationale must be stated in the Nominating Committee Director Removal Petition and that rationale might refer to votes of the director to follow GAC consensus advice, the GAC carve-out should not apply, since removal of a single director does not constitute a challenge to the Board's implementation of GAC consensus advice. We would like the CCWG to confirm this approach.

29b. As discussed with the CCWG and provided in the Proposal, we have generally adhered to the principle in the draft Bylaws that, within the EC, the Decisional Participants who were responsible for nominating a director are also responsible for directing the EC as to that director's removal. This is true for removal of directors nominated by the ASO, the ccNSO, the GNSO, and the ALAC. We considered whether, on the same principle, since the GAC is the only Decisional Participant that does not have a voting delegate on the NomCom, it would be appropriate to exclude GAC as a Decisional Participant from decisions to remove directors nominated by the NomCom. After discussion among counsel, however, we conclude that, in lieu of the NomCom, the Proposal gives the EC the power to remove any NomCom director without reference to excluding Decisional Participants who do not hold the right to appoint voting delegates to the NomCom, and the principle cited above is insufficient to require any deviation from the Proposal on this point. We therefore recommend that all Decisional Participants in the EC participate in any EC decision to remove a NomCom-nominated director. We would like the CCWG to confirm this approach.