ICANN BOARD PAPER NO. 2018-03-15-1b

TITLE: **IT Services Contracting**

PROPOSED ACTION: **For Board Approval**

EXECUTIVE SUMMARY:

In November 2014, the ICANN Board approved a request from ICANN organization to engage an expert third party outsourcing firm to augment IT capacity. That led to a three-year contract with Zensar, based in Pune, India. The Board authorized ICANN org to enter into that contract for an annual value not to exceed Confiden ial Nego ia ion nforma ion

Confidential Negotiation Information

This contract was extended through March 2018 with Board approval to allow time for ICANN org to conduct a full request for proposal to be performed in order to ensure that the ICANN org still had the best outsource solution. The Board is requested to approve a new two-year contract for an amount of Confiden ial Nego ia ion nforma ion

ICANN ORG AND BOARD FINANCE COMMITTEE (BFC) RECOMMENDATION:

Both ICANN org and the BFC recommend that the Board authorizes the President and CEO, or his designee(s), to take all necessary actions to enter into, and make disbursement in furtherance of, a new Zensar contract, for the period April 2018 through March 2020 (24 months).

PROPOSED RESOLUTION:

Whereas, ICANN org's Engineering and Information Technology department has a need for continued third-party development, quality assurance and content management support.

Whereas, Zensar has provided good services in software engineering, quality assurance and content management over the last several years.

Whereas, ICANN org conducted a full request for proposal, the results of which lead ICANN org to determine that Zensar is still the preferred vendor.

Resolved (2018.02.XX.XX), the Board authorizes the President and CEO, or his designee(s), to enter into enter into, and make disbursement in furtherance of, a new Zensar contract for a term of 24 months with total cost not to exceed Conf dent a Negot at on Informat on
All internal discussion is considered confidential until such time as final negotiations with Zensar are completed. These costs based on current Zensar RFP response and are currently under negotiation.

Resolved (2018.xx.xx.xx), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article III, section 5.2 of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

PROPOSED RATIONALE:

ICANN org's Engineering & IT (E&IT) department has used Zensar to support development, quality assurance and content management needs since November 2014. This relationship has been beneficial to ICANN org and, overall has been a success.

The current three-year contract expired in November 2017 and was extended through March 2018 to allow ICANN org to perform a full request for proposal (RFP).

Eleven vendors were included in the RFP of which six responded. Of these two were cheaper and three more expensive than Zensar.

The RFP identified that Zensar rates are on par with others that may be interested in supporting this project.

The RFP team estimated that transition costs to move to another vendor would be at least 25% for a period of six months. More expensive vendors were therefore eliminated.

Zensar and two less expensive rivals were asked to present their proposals and answer questions from the ICANN org team. During the presentations, it was identified that

both rivals did not have sufficient existing resources to support this project for ICANN org and would need to engage additional staff if they were awarded the contract. Staffing up would take time, causing delays. Quality of new staff would be an unknown.

While the RFP was in progress, ICANN org undertook the FY19 budget process and identified the need for reduction in these services to meet future targets. The resulted in a reduction of 2/3 (43 to 15 people) of the outsource contract. This reduction changes ICANN org's needs and hence the services that would be provided by the outsource provider. While Zensar, being the incumbent would accept these reductions, they would require additional negotiation with the other RFP responders.

Zensar has three years of ICANN knowledge. Retaining Zensar as the preferred provider ensures continuity in support.

Taking this step is in the fulfillment of ICANN's mission and in the public's interest to ensure that ICANN organization is utilizing the right third party providers, and to ensure that it is maximizing available resources in a cost efficient and effective manner.

This action will have a fiscal impact on the organization, but that impact has already been anticipated and is covered in the FY18 and FY19 budget. This action will not impact the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

Submitted by:	Ashwin Rangan & Xavier Calvez
Position:	SVP, Engineering, CIO and Chief Financial Officer
Date Noted:	13 February 2018
Email:	Ashwin.rangan@icann.org and xavier.calvez@icann.org

ICANN BOARD PAPER NO. 2018-03-15-1c

TITLE:	**New GNSO Voting Thresholds to Address Post-Transition Roles and Responsibilities of the GNSO as a Decisional Participant in the Empowered Community - Proposed Changes to ICANN Bylaws**
PROPOSED ACTION:	**For Board Resolution**

EXECUTIVE SUMMARY:

During its meeting on 30 January 2018, the GNSO Council resolved unanimously (https://community.icann.org/display/gnsocouncilmeetings/Motions+30+January+2018) to recommend that the ICANN Board of Directors adopt the proposed changes to section 11.3.i of the ICANN Bylaws to reflect additional GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House (see https://www.icann.org/en/system/files/files/proposed-revisions-bylaws-article-11-gnso-redline-19jun17-en.pdf). These additional voting thresholds are intended to address all the new or additional rights and responsibilities in relation to participation of the GNSO as a Decisional Participant in the Empowered Community to fully implement these new or additional rights and responsibilities as they appear in the revised GNSO Operating Procedures published on 30 January 2018 (see https://gnso.icann.org/en/council/op-procedures-30jan18-en.pdf).

The Board is requested to direct staff to post the proposed changes for public comment. After taking public comments into account, the Board will consider the proposed changes for adoption. This action is a "Standard Bylaw Amendment" that is an interim step required by the Standard Bylaw Amendment procedure in Section 25.1 of the Bylaws whereby the Board must post the amendment for public comment before it considers the amendment. If the Board approves the amendment, then it has to provide a Board notice, following which the steps contemplated in Article 2 of Annex D (Procedure for exercise of Empowered Community's rights to reject specified actions) is to be followed.

STAFF RECOMMENDATION:

Staff recommends that a public comment period that specifically calls out the proposed additions to the GNSO voting thresholds in the ICANN Bylaws is necessary to ensure full transparency and opportunity for the broader community to comment on these proposed changes prior to consideration by the ICANN Board. In addition, staff notes that the "Standard Bylaw Amendment" procedure under Section 25.1 of the Bylaws requires that Standard Bylaw Amendments must be published for public comment prior to the approval by the Board.

PROPOSED RESOLUTION:

Whereas, during its meeting on 30 January 2018, the GNSO Council resolved (https://community.icann.org/display/gnsocouncilmeetings/Motions+30+January+2018) to recommend that the ICANN Board of Directors adopt the proposed changes to section 11.3.i of the ICANN Bylaws to reflect new GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House (see https://www.icann.org/en/system/files/files/proposed-revisions-bylaws-article-11-gnso-redline-19jun17-en.pdf).

Whereas, the addition of voting thresholds to section 11.3.i of the ICANN Bylaws as proposed by the GNSO would constitute a "Standard Bylaw Amendment" under Section 25.1 of the Bylaws.

Whereas, the ICANN Bylaws requires that Standard Bylaw Amendments be published for public comment prior to the approval by the Board.

Whereas, after taking public comments into account, the Board will consider the proposed changes for adoption.

Resolved (2018.xx.xx.xx), the President and CEO, or his designee(s), is directed to post for public comment for a period of at least 40 days the Standard Bylaw Amendment reflecting the proposed additions to section 11.3.i of the ICANN Bylaws to reflect additional GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House to address all the new or additional rights and

responsibilities in relation to participation of the GNSO as a Decisional Participant in the Empowered Community.

PROPOSED RATIONALE:

The action being approved today is to direct the ICANN President and CEO, or his designee, to initiate a public comment period on proposed changes to section 11.3.i of the ICANN Bylaws to reflect additional GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House, which is the default GNSO Council voting threshold, to address all the new or additional rights and responsibilities in relation to participation of the GNSO as a Decisional Participant in the Empowered Community. The Board's action is a first step to consider the unanimous approval by the GNSO Council of the proposed changes.

The Board's action to initiate a public comment period on this Standard Bylaws Amendment serves the public interest by helping to fulfill ICANN's commitment to operate through open and transparent processes. In particular, publication of Bylaws amendments is necessary to ensure full transparency and opportunity for the broader community to comment on these proposed changes prior to consideration by the ICANN Board

There is no anticipated fiscal impact from this decision, which would initiate the opening of public comments, and no fiscal impact from the proposed changes to the Bylaws, if adopted. Approval of the resolution will not impact the security, stability and resiliency of the domain name. The interim action of posting of the proposed Bylaws amendments for public comment is an Organizational Administrative Action not requiring public comment.

Signature Block:

Submitted by: Marika Konings

Position: Vice President, Policy Development Support - GNSO

Date Noted: 06 March 2018

Email: marika konings@icann.org

ICANN BOARD PAPER NO. 2018-03-15-1d

TITLE:	**Initiating the Second Review of the Country Code Names Supporting Organization (ccNSO)**
PROPOSED ACTION:	**Board Action (consent agenda)**

EXECUTIVE SUMMARY:

The ICANN Bylaws mandate organizational reviews of its Supporting Organizations and Advisory Committees, with the Organizational Effectiveness Committee of the Board (OEC) having oversight responsibility. The OEC recommends that the Board initiate the second Review of the Country Code Names Supporting Organization (ccNSO), as per Article 4, Section 4.4 of the ICANN Bylaws, which is due to start in August 2018.

ORGANIZATIONAL EFFECTIVENESS COMMITTEE RECOMMENDATION:

The OEC recommends that the Board initiate the second Review of the ccNSO, per the guidelines and provisions contained in Article 4, Section 4.4 of the ICANN Bylaws. The OEC further recommends that the Board direct ICANN organization to initiate a Request for Proposals from candidates interested to serve as an independent examiner, in accordance with ICANN's procurement policies and practices. To support an efficient and effective review, the leadership of the ccNSO is encouraged to assemble a review working party to serve as a liaison between the independent examiner, ICANN organization, the OEC and the ccNSO. This recommendation is based on useful past practices and lessons learned from previous reviews.

BACKGROUND:

The ICANN Bylaws, in Article 4, Section 4.4, stipulate that: "the Board shall cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review."

The Bylaws also state that "[t]hese periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board."

The timeline of the first ccNSO Review shows that the independent examiner submitted their Final Report on 15 June 2010. Subsequently, the ccNSO Review Working Group submitted its Final Report on 4 March 2011. In 2015, the second ccNSO Review was deferred to August 2017 due to the IANA Stewardship Transition.

In March 2017, the Chair of the ICANN Board's Organizational Effectiveness Committee (OEC), enquired with all of ICANN's Supporting Organizations and Advisory Committees that were scheduled for Organizational Reviews in 2017, whether they would like to defer their review by twelve months, due to the considerable number of other, ongoing community work efforts. On behalf of the ccNSO, the ccNSO Council Chair indicated support of the deferral of the second ccNSO Review. A public comment period on the proposed deferral received support from a majority of contributors. Consequently, on 23 September 2017, the ICANN Board resolved to defer the second ccNSO Review in response to community concerns about volunteer bandwidth.

PROPOSED RESOLUTION:

Whereas, the ICANN Bylaws state that the ICANN Board "shall cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review."

Whereas, as part of the first Country Code Names Supporting Organization (ccNSO) Review, the ccNSO Review Working Group submitted its Final Report to the ICANN Board on 4 March 2011, and per Resolution 2017.09.23.05, the Board resolved to defer the second ccNSO Review until August 2018.

Resolved (2018.xx.xx.xx), that the Board initiates the second ccNSO Review and directs ICANN organization to post a Request for Proposal to procure an independent examiner to begin the review as soon as practically feasible.

Resolved (2018.xx.xx.xx), that the Board encourages the ccNSO to prepare for an independent examiner to begin work on the second ccNSO review in August 2018 by organizing a Review Working Party to serve as a liaison during the preparatory phase and throughout the review and to conduct a self-assessment prior to August 2018.

PROPOSED RATIONALE:

Why is the Board addressing the issue?

This action is taken to provide a clear and consistent approach towards complying with ICANN Bylaws' mandate to conduct reviews. Moreover, the Board is addressing this issue because the Bylaws stipulate organizational reviews take place every five years. Following an initial deferral due to the IANA Stewardship Transition, the ICANN Board had deferred the ccNSO Review in 2017 to commence in 2018. The Board is now initiating the second Review of the Country Code Names Supporting Organization (ccNSO) to prepare for an independent examiner to begin work in August 2018.

Which stakeholders or others were consulted?

No consultation took place as this action is in line with the guidelines and provisions contained in Article 4, Section 4.4 of the ICANN Bylaws, and Resolution 2017.09.23.05.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, and budget); the community; and/or the public?

Timely conduct of organizational reviews is consistent with ICANN's strategic and operating plans. The budget for the second ccNSO Review has been approved as part of ICANN's annual budget cycle and the funds allocated to the ccNSO Review are managed by the ICANN organization team responsible for these reviews. No additional budgetary requirements are foreseen at this time and separate consideration will be given to the budget impact of the implementation of recommendations that may result from the review.

Are there any security, stability or resiliency issues relating to the DNS?

There are no security, stability or resiliency issues relating to the DNS as the result of this action.

This action is consistent with ICANN's mission and serves the global public interest by supporting the effectiveness and ongoing improvement of ICANN's accountability and governance structures.

Signature Block:

Submitted by: Larisa Gurnick

Position: VP, Multistakeholder Strategy and
Strategic Initiatives

Date Noted: 28 February 2018

Email: Larisa.gurnick@icann.org

ICANN BOARD PAPER NO. 2018-03-15-1e

TITLE: Transfer of the .TD (Chad) top-level domain to l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC)

PROPOSED ACTION: For Board Consideration on Consent Agenda **IANA REFERENCE:** 982360

EXECUTIVE SUMMARY:

As part of PTI's responsibilities under the IANA Naming Function contract with ICANN, PTI has prepared a recommendation to authorize the transfer of the country-code top-level domain for .TD (Chad)to l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC).

Key points of the investigation on the transfer request are:

- The string under consideration represents Chad that is listed in the ISO 3166-1 standard and is eligible for transfer.
- The proposed manager is l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC), a public organization with administrative status. ADETIC was established in 2014 by Act No 012/PR/2014 and its mission includes managing the .TD top-level domain.
- Support for the transfer has been provided by:
    - The African Civil Society on Information Society (ACSIS), a Pan-African network of over 100 member organizations dedicated to promoting sustainable, open and inclusive ICT in Africa.
- Informed consent of the transfer of .TD was provided by Mahamat Mbodou Mbodoumi, Provisional Administrator of the incumbent manager, SOTEL TCHAD.

PROPOSED RESOLUTION:

Resolved (2018.xx.xx.xx), as part of the exercise of its responsibilities under the IANA Naming Function Contract with ICANN, PTI has reviewed and evaluated the request to transfer the .TD country-code top-level domain to l'Agence de Développement des
Technologies de l'Information et de la Communication (ADETIC). The documentation demonstrates that the proper procedures were followed in evaluating the request.

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

In accordance with the IANANaming Function Contract, PTI has evaluated a request for ccTLD transfer and is presenting its report to the Board for review. This review by the Board is intended to ensure that the proper procedures were followed.

What is the proposal being considered?

The proposal is to approve a request to transfer the country-code top-level domain .TD and assign the role of manager to l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC).

Which stakeholders or others were consulted?

In the course of evaluating this transfer application, PTI consulted with the applicant and other significantly interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

What concerns or issues were raised by the community?

PTI is not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

The Board reviewed the following evaluations:

- The domain is eligible for transfer, as the string under consideration represents Chad that is listed in the ISO 3166-1 standard;
- The relevant government has been consulted and does not object;
- The incumbent manager consents to the transfer;
- The proposed manager and its contacts agree to their responsibilities for managing these domains;
- The proposal has demonstrated appropriate significantly interested parties' consultation and support;
- The proposal does not contravene any known laws or regulations; • The proposal ensures the domains are managed locally in the country, and are bound under local law;
- The proposed manager has confirmed they will manage the domains in a fair and equitable manner;
- The proposed manager has demonstrated appropriate operational and technical skills and plans to operate the domains;
- The proposed technical configuration meets the technical conformance requirements; • No specific risks or concerns relating to Internet stability have been identified; and • Staff have provided a recommendation that this request be implemented based on the factors considered.

These evaluations are responsive to the appropriate criteria and policy frameworks, such as "Domain Name System Structure and Delegation" (RFC 1591) and "GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains".

As part of the process, Delegation and Transfer reports are posted at http://www.iana.org/reports.

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN's overall mission, the local communities to which country- code top-level domains are designated to serve, and responsive to obligations under the IANA Naming Function Contract.

Are there financial impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS root zone is part of the IANA functions, and the delegation action should not cause any significant variance on pre planned expenditure. It is not the role of ICANN to assess the financial impact of the internal operations of country-code top-level domains within a country.

Are there any security, stability or resiliency issues relating to the DNS?

ICANN does not believe this request poses any notable risks to security, stability or resiliency. This is an Organizational Administrative Function not requiring public comment.

SIGNATURE BLOCK:

Submitted by: Naela Sarras

Position: Sr. Manager, IANA Services

Date Noted: 27 February 2018

Email: naela.sarras@icann.org

ICANN BOARD SUBMISSION NO. 2018.03.15.2a

TITLE:	**Next Steps in Community Priority Evaluation Process Review**
PROPOSED ACTION:	**For Consideration and Approval**

EXECUTIVE SUMMARY:

The Board directed the President and CEO or his designees to undertake a review of the "process by which ICANN [organization] interacted with the [Community Priority Evaluation (CPE)] Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider" (Scope 1).[1] The Board's action was part of the ongoing discussions regarding various aspects of the CPE process.

Thereafter, the Board Governance Committee (BGC) determined that the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout and across each CPE report (Scope 2); and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations that are the subject of pending Reconsideration Requests relating to the CPE process (Scope 3).[2] Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. The BGC determined that the relevant pending Reconsideration Requests would be on hold until the CPE Process Review was completed.

The CPE Process Review was conducted by FTI Consulting, Inc.'s (FTI) Global Risk and Investigations Practice and Technology Practice. On 13 December 2017, ICANN organization published the three reports on the CPE Process Review (CPE Process Review Reports) generated by FTI. The three reports are attached as Attachments A, B, and C to the Reference Materials.

With respect to Scope 1, FTI concluded:

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1 https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a.
2 https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en.

> there is no evidence that ICANN organization had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process….While FTI understands that many communications between ICANN organization and the CPE Provider were verbal and not memorialized in writing, and thus FTI was not able to evaluate them, FTI observed nothing during its investigation and analysis that would indicate that any verbal communications amounted to undue influence or impropriety by ICANN organization.[3]

For Scope 2, FTI concluded that "the CPE Provider consistently applied the criteria set forth in the New gTLD Applicant Guidebook and the CPE Guidelines throughout each CPE."[4]

For Scope 3, FTI observed that all eight of the relevant CPE reports (which are the ones at issue in the Reconsideration Requests placed on hold) referenced research. Two of the eight relevant CPE reports included citations to the referenced research. Of the remaining six relevant CPE reports, while the reports did not include citations to the referenced research, in five of the six instances, FTI found citations to or the materials that corresponded with the research, in the working papers underlying the reports. In the other instance (for which two CPE reports were done on the same application) FTI did not find citation to the referenced research in the working papers underlying the relevant report. However, FTI did find citation to research in the working papers underlying the first CPE of that same application.[5] Accordingly, based on FTI's observations, it is possible that the research being referenced in the relevant CPE report was the research for which citations were found in the working papers underlying the first CPE on that particular application.

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[3] Scope 1 Report, Pg. 3, https://www.icann.org/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf.

[4] Scope 2 Report, Pg. 3, https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf.

[5] Scope 3 Report, Pg. 4, https://www.icann.org/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf.

The Board is now being asked to consider and adopt the Board Accountability Mechanisms Committee's (BAMC) recommendation below.

BAMC RECOMMENDATION:

The BAMC recommends that the Board take the following actions relating to the CPE Process Review: (i) acknowledge and accept the findings in the three reports; (ii) resolve that, as a result of the findings in the CPE Process Review Reports, no overhaul or change to the CPE process for this current round of the New gTLD Program is necessary; (iii) declare that the CPE Process Review has been completed; and (iv) direct the BAMC to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review in accordance with the Transition Process of Reconsideration Responsibilities from the BGC to the BAMC document.

PROPOSED RESOLUTION:

Whereas, the Board directed the President and CEO or his designees to undertake a review of the "process by which ICANN [organization] interacted with the [Community Priority Evaluation (CPE)] Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider";

Whereas, the Board Governance Committee (BGC) determined that the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report; and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations that are the subject of pending Reconsideration Requests relating to the CPE process (collectively, the CPE Process Review). (*See* https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en.)

Whereas, the BGC determined that the following pending Reconsideration Requests would be on hold until the CPE Process Review was completed: 14-30,[6] 14-32,[7] 14-33,[8] 16-3, 16-5, 16-8, 16-11, and 16-12. (*See* https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf.)

Whereas, the CPE Process Review was conducted by FTI Consulting, Inc.'s (FTI) Global Risk and Investigations Practice and Technology Practice.

Whereas, on 13 December 2017, ICANN organization published the three reports on the CPE Process Review (the CPE Process Review Reports).

Whereas, the Board Accountability Mechanisms Committee (BAMC) has considered the CPE Process Review Reports (the conclusions of which are set forth in the rationale below) and has provided recommendations to the Board of next steps in the CPE Process Review.

Whereas, the Board has considered the three CPE Process Review Reports and agrees with the BAMC's recommendations.

Resolved (2018.03.15.XX), the Board acknowledges and accepts the findings set forth in the three CPE Process Review Reports.

Resolved (2018.03.15.XX), the Board concludes that, as a result of the findings in the CPE Process Review Reports, no overhaul or change to the CPE process for this current round of the New gTLD Program is necessary.

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[6] Request 14-30 (.LLC) was withdrawn on 7 December 2017. *See* https://www.icann.org/en/system/files/files/dotregistry-llc-withdrawal-redacted-07dec17-en.pdf.

[7] Request 14-32 (.INC) was withdrawn on 11 December 2017. *See* https://www.icann.org/en/system/files/files/reconsideration-14-32-dotregistry-request-redacted-11dec17-en.pdf.

[8] Request 14-33 (.LLP) was withdrawn on 15 February 2018. *See* https://www.icann.org/en/system/files/files/reconsideration-14-33-dotregistry-request-redacted-15feb18-en.pdf.

Resolved (2018.03.175.XX), the Board declares that the CPE Process Review has been completed.

Resolved (2018.03.15 .XX), the Board directs the Board Accountability Mechanisms Committee to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review in accordance with the Transition Process of Reconsideration Responsibilities from the BGC to the BAMC document.

PROPOSED RATIONALE:

CPE is a contention resolution mechanism available to applicants that self-designated their applications as community applications.[9] CPE is defined in Module 4.2 of the Applicant Guidebook, and allows a community-based application to undergo an evaluation against the criteria as defined in section 4.2.3 of the Applicant Guidebook, to determine if the application warrants the minimum score of 14 points (out of a maximum of 16 points) to earn priority and thus prevail over other applications in the contention set.[10] CPE will occur only if a community-based applicant selects to undergo CPE for its relevant application and after all applications in the contention set have completed all previous stages of the new gTLD evaluation process. CPE is performed by an independent provider (CPE Provider).

The Board directed the President and CEO or his designees to undertake a review of the "process by which ICANN [organization] interacted with the [Community Priority Evaluation] CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider" as part of the Board's oversight of the New gTLD Program (Scope 1).[11] The Board's action was part of the ongoing discussions regarding

[9] *See* Applicant Guidebook, Module 4.2 at Pg. 4-7 (https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf). *See also* https://newgtlds.icann.org/en/applicants/cpe.

[10] *Id.* at Module 4.2 at Pg. 4-7 (https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf).

[11] https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a.

various aspects of the CPE process, including some issues that were identified in the Final Declaration from the Independent Review Process (IRP) proceeding initiated by Dot Registry, LLC.

Thereafter, the Board Governance Committee (BGC) determined that the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report (Scope 2); and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations that are the subject of pending Reconsideration Requests relating to the CPE process (Scope 3).[12] Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. The BGC determined that the following pending Reconsideration Requests would be on hold until the CPE Process Review was completed: 14-30 (.LLC),[13] 14-32 (.INC),[14] 14-33[15] (.LLP), 16-3 (.GAY), 16-5 (.MUSIC), 16-8 (.CPA), 16-11 (.HOTEL), and 16-12 (.MERCK).

On 13 December 2017, ICANN organization published three reports on the CPE Process Review.

For Scope 1, "FTI conclude[d] that there is no evidence that ICANN organization had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process….While FTI understands that many communications between ICANN organization and the CPE Provider were verbal and not memorialized in writing, and thus FTI was not able to evaluate them, FTI observed nothing during its investigation and analysis that would

[12] https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en.
[13] Reconsideration Request 14-30 was withdrawn on 7 December 2017. *See* https://www.icann.org/en/system/files/files/reconsideration-14-30-dotregistry-request-redacted-07dec17-en.pdf.
[14] Reconsideration Request 14-32 was withdrawn on 11 December 2017. *See* https://www.icann.org/en/system/files/files/reconsideration-14-32-dotregistry-request-redacted-11dec17-en.pdf.
[15] Reconsideration Request 14-33 was withdrawn on 15 February 2018. *See* https://www.icann.org/en/system/files/files/reconsideration-14-33-dotregistry-request-redacted-15feb18-en.pdf.

indicate that any verbal communications amounted to undue influence or impropriety by ICANN organization." (Scope 1 Report, Pg. 4)

For Scope 2, "FTI conclude[d] that the CPE Provider consistently applied the criteria set forth in the New gTLD Applicant Guidebook and the CPE Guidelines throughout each CPE." (Scope 2 Report, Pg. 3.)

For Scope 3, "[o]f the eight relevant CPE reports, FTI observed two reports (.CPA, .MERCK) where the CPE Provider included a citation in the report for each reference to research. For all eight evaluations (.LLC, .INC, .LLP, .GAY, .MUSIC, .CPA, .HOTEL, and .MERCK), FTI observed instances where the CPE Provider cited reference material in the CPE Provider's working papers that was not otherwise cited in the final CPE report. In addition, in six CPE reports (.LLC, .INC, .LLP, .GAY, .MUSIC, and .HOTEL), FTI observed instances where the CPE Provider referenced research but did not include citations to such research in the reports. In each instance, FTI reviewed the working papers associated with the relevant evaluation to determine if the citation supporting referenced research was reflected in the working papers. For all but one report, FTI observed that the working papers did reflect the citation supporting referenced research not otherwise cited in the corresponding final CPE report. In one instance—the second .GAY final CPE report—FTI observed that while the final report referenced research, the citation to such research was not included in the final report or the working papers for the second .GAY evaluation. However, because the CPE Provider performed two evaluations for the .GAY application, FTI also reviewed the CPE Provider's working papers associated with the first .GAY evaluation to determine if the citation supporting research referenced in the second .GAY final CPE report was reflected in those materials. Based upon FTI's investigation, FTI finds that the citation supporting the research referenced in the second .GAY final CPE report may have been recorded in the CPE Provider's working papers associated with the first .GAY evaluation." (Scope 3 Report, Pg. 4.)

The Board notes that FTI's findings are based upon its review of the written communications and documents described in the three Reports. The Board

Accountability Mechanisms Committee (BAMC) considered the CPE Process Review Reports as part of its oversight of accountability mechanisms and recommended that the Board take the foregoing actions related to the CPE Process Review. The Board agrees. In particular, the BAMC is ready to re-start its review of the remaining reconsideration requests that were put on hold. To ensure that the review of these pending Reconsideration Requests are conducted in an efficient manner and in accordance with the "Transition Process of Reconsideration Responsibilities from the BGC to the BAMC", the BAMC has developed a Roadmap for the review of the pending Reconsideration Requests.

The Board acknowledges receipt of the letters to the ICANN Board from dotgay LLC on 15 and 20 January 2018, and from DotMusic Limited on 16 January 2018, regarding the CPE Process Review Reports. Both dotgay LLC and DotMusic Limited claim that the CPE Process Review lacked transparency or independence, and was not sufficiently thorough, and ask that the ICANN Board take no action with respect to the conclusions reached by FTI, until the parties have had an opportunity to respond to the FTI Report and to be heard as it relates to their pending reconsideration requests. (*See* https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-15jan18-en.pdf; https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-20jan18-en.pdf; and https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf.) The Board has considered the arguments raised in the letters. The Board notes that dotgay LLC and DotMusic Limited (among other requestors) each will have an opportunity to submit supplemental materials and make a presentation to the BAMC to address how the CPE Process Review is relevant to their pending Reconsideration Requests. Any specific claims they might have related to the FTI Reports with respect to their particular applications can be addressed then, and ultimately will be considered in connection with the determination on their own Reconsideration Requests.

The Board also acknowledges receipt of the letter to the ICANN Board from dotgay LLC on 31 January 2018, which attached the Second Expert Opinion of Professor William N. Eskridge, Jr., addressing FTI's Scope 2 Report and Scope 3 Report on the CPE

Process Review. (https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf.) The Board has considered the arguments raised in the letter and accompanying Second Expert Opinion, and finds that they do not impact this Resolution, but instead will be addressed in connection with dotgay LLC's pending Reconsideration Request 16-3.

First, and as an initial matter, the Board does not accept dotgay LLC's assertion that "a strong case could be made that the purported investigation was undertaken with a pre-determined outcome in mind." (https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf, at Pg. 1.) Neither dotgay LLC nor Professor Eskridge offers any support for this baseless claim, and there is none. (https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf.) Second, dotgay LLC urges the Board to entirely "reject the findings made by FTI in the FTI Reports", but dotgay LLC has submitted no basis for this outcome. All dotgay LLC offers is Professor Eskridge's Second Expert Opinion, which, at its core, challenges the merits of the report issued by the CPE Provider in connection with dotgay LLC's community application for the .GAY gTLD. . (*See* Response to dotgay LLC at https://www.icann.org/en/system/files/correspondence/wallace-to-ali-05mar18-en.pdf ; *see* also Response from dotgay LLC at https://www.icann.org/en/system/files/correspondence/ali-to-wallace-07mar18-en.pdf .) Dotgay LLC will have the opportunity to include such claims in that regard and if it does, the claims will be addressed in connection with their reconsideration request that is currently pending.

The Board also acknowledges the 1 February 2018 letter from applicants Travel Reservations SRL, Minds + Machines Group Limited, Radix FXC, dot Hotel Inc. and Fegistry LLC (regarding "Consideration of Next Steps in the Community Priority Evaluation Process Review (Reconsideration Request 16-11)." These applicants that submitted Request 16-11 claim that the CPE Process Review lacked transparency or independence, and ask that the Board address the inconsistencies to "ensure a meaningful review of the CPE regarding .hotel."

(https://www.icann.org/en/system/files/files/reconsideration-16-11-trs-et-al-petillion-to-icann-bamc-redacted-01feb18-en.pdf, Pg. 4.) The Board understands the arguments raised in the letter, and again reiterates that the individual requestors with reconsideration requests that were placed on hold pending completion of the CPE Process Review will have the opportunity to submit additional information in support of those reconsideration requests, including the requestors that filed Reconsideration Request 16-11.

The Board acknowledges receipt of DotMusic Limited's submission to the ICANN Board, on 2 February 2018, regarding the CPE Process Review Reports. First, and as an initial matter, the Board does not accept DotMusic Limited's assertions that FTI's "objective was to exonerate ICANN and the CPE panel", that "the intent of the investigation was to advocate in favor of ICANN and [the CPE Provider]", and that "ICANN carefully tailored the narrow scope of the investigation and cherry-picked documents and information to share with the FTI to protect itself." (https://www.icann.org/en/system/files/correspondence/roussos-to-marby-02feb18-en.pdf, ¶ 109, Pg. 65, ¶ 69, Pg. 48, ¶ 74, Pg. 49, ¶ 76, Pg. 49.) DotMusic Limited offers no support for these baseless claims, and there is none. (*See* Response to DotMusic Limited, https://www.icann.org/en/system/files/correspondence/wallace-to-roussos-schaeffer-05mar18-en.pdf; *see also* Response from DotMusic Limited, https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-jones-day-07mar18-en.pdf.) DotMusic Limited otherwise reiterates the claims made in its 16 January 2018 letter to the ICANN Board, namely that the CPE Process Review lacked transparency and was too narrow. DotMusic Limited asserts that it would be unreasonable for the ICANN Board to accept the conclusions of the FTI Report and reject DotMusic's Reconsideration Request 16-5. The Board has considered the arguments raised in DotMusic Limited's submission, and finds that they do not impact this Resolution. As noted above, DotMusic Limited (among other Requestors) will have an opportunity to submit supplemental materials and make a presentation to the BAMC to address how the CPE Process Review is relevant to its pending Reconsideration Request 16-5, such that any claims DotMusic Limited might have related to the FTI

Reports can be addressed then, and then ultimately will be considered in connection with the determination on Reconsideration Request 16-5.

The Board also acknowledges the 22 February 2018 letter from applicants Travel Reservations SRL, Minds + Machines Group Limited, Radix FXC, dot Hotel Inc. and Fegistry LLC (regarding "Consideration of Next Steps in the Community Priority Evaluation Process Review (Reconsideration Request 16-11)." These applicants that submitted Request 16-11 reiterate their claim that the CPE Process Review lacked transparency, and further assert that ICANN organization continues to be "non-transparent about the CPE deliberately" insofar as ICANN organization has not published a preliminary report of the BAMC's 2 February 2018 meeting, which these applicants claim is required pursuant to Article 3, Section 3.5(c) of the ICANN Bylaws. (https://www.icann.org/en/system/files/files/reconsideration-16-11-trs-et-al-petillion-to-icann-bamc-redacted-22feb18-en.pdf, Pg. 2.) First, the Board notes that Article 3, Section 3.5 relates to Minutes and Preliminary Reports of meetings of the Board, the Advisory Committees and Supporting Organizations. (*See* Article 3, Section 3.5(a).) In this regard, the timing requirements relative to the publication of preliminary reports provided by Article 3, Section 3.5 (c) of the Bylaws relates to the publication of "any actions taken by the Board" after the conclusion a Board meeting, not Board Committees meetings. In either case, the minutes of the BAMC's 2 February 2018 meeting has been published and reflects that the BAMC considered the recent letters to the ICANN Board regarding the CPE Process Review. (*See* https://www.icann.org/resources/board-material/minutes-bamc-2018-02-02-en.) Second, the Board did timely publish, in accordance with Article 3, Section 3.5(c), a preliminary report regarding "Next Steps in Community Priority Evaluation Process Review – UPDATE ONLY", which reflected the Board's discussion of the CPE Process Review, including the fact that "the Board has received letters from a number of applicants … [, that] the BAMC [has] taken the letters and reports into consideration as part of its recommendation to the Board, [and that] the proposed resolution has been continued to the Board's next meeting in Puerto Rico to allow the Board members additional time to consider the new documents." (Preliminary Report | Regular Meeting of the ICANN Board, *available* at: https://www.icann.org/resources/board-

material/prelim-report-2018-02-04-en). Third, the Board understands the arguments raised in the letter, and again reiterates that the individual requestors with reconsideration requests that were placed on hold pending completion of the CPE Process Review will have the opportunity to submit additional information in support of those reconsideration requests, including the requestors that filed Reconsideration Request 16-11.

The Board acknowledges receipt of a letter from the Head of Institutional Relations at the European Broadcasting Union to dotgay LLC, with a copy to the ICANN Board regarding its "disappointing experience with the Community Priority Evaluation (CPE) process." (https://www.icann.org/en/system/files/correspondence/mazzone-to-baxter-06mar18-en.pdf, Pg. 1.) The EBU raised very generalized concerns about the CPE process but did not provide any level of specificity about those concerns. Because the letter lacks specificity and does not detail the EBU's precise concerns, the Board regards the letter as support for the positions expressed by dotgay LLC and will be considered as part of the Board's evaluation of dotgay LLC's pending Reconsideration Request.

The Board also acknowledges receipt of letters from SERO and the National LGBT Chamber of Commerce on 18 February 2018 and 1 March 2018, respectively, expressing support for dotgay LLC's community application. These letters will be considered as part of the Board's evaluation of dotgay LLC's pending Reconsideration Request.

Taking this action is in the public interest and consistent with ICANN's Mission as it will provide transparency and accountability regarding the issue of CPE Process Review.

This action has no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 7 May 2018
Email: amy.stathos@icann.org

ICANN BOARD SUBMISSION NO. 2018-03-15-2b

TITLE:	**Further Consideration of the *Gulf Cooperation Council v. ICANN* Independent Review Process Final Declarations**
PROPOSED ACTION:	**For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Board previously considered the Final Declaration as to the merits (Final Declaration) and the Final Declaration As To Costs (Costs Declaration) in the *Gulf Cooperation Council (GCC) v. ICANN* Independent Review Process (IRP). The Board determined that additional analysis was needed regarding the Board's ability to accept certain aspects of the Final Declaration while potentially rejecting other aspects of the Final Declaration. (*See* Resolution 2017.03.16.08.)

Pursuant to the Board's directive, the Board Accountability Mechanisms Committee (BAMC) reviewed the Final Declaration, conducted an analysis regarding the Board's ability to accept certain aspects of the Final Declaration while rejecting other aspects, and considered various options regarding the Panel's recommendation that the "Board take no further action on the 'persiangulf' gTLD application, and in specific not sign a registry agreement with Asia Green, or any other entity, in relation to the '.persiangulf' gTLD." After extensive analysis and discussion, the BAMC recommends that the Board refute certain of the Panel's underlying factual findings and conclusions (identified in the Rationale below), and that the Board treat the GAC statement in the Durban Communiqué regarding .PERSIANGULF as if it were non-consensus advice pursuant to the second advice option in Module 3.1 (subparagraph II) of the Applicant Guidebook (Guidebook).

The BAMC has made this recommendation for primarily two reasons. First, as the Panel noted, and the BAMC agreed, the statement in the Durban Communiqué regarding .PERSIANGULF "fell outside all three permissible forms for [GAC] advice" as defined in Module 3.1 of the Guidebook. The BAMC can appreciate how the Panel thought that

the GAC advice should have been provided pursuant to the second advice option in Module 3.1 (subparagraph II) of the Guidebook. Specifically, the Panel noted that, among other things: (i) the .PERSIANGULF application was the subject of a GAC Early Warning; and (ii) certain GAC members expressed concerns about .PERSIANGULF during the GAC Durban meeting. While the Board was aware of the GAC Early Warning, it did not have access to the GAC Durban meeting minutes when it passed the 10 September 2013 Resolution to continue processing .PERSIANGULF, unlike the Panel, which did have access to those minutes when it issued its Final Declaration.

Second, and in the light of the Final Declation in this matter, the BAMC notes inconsistencies in the GAC's handling and communications regarding the .PERSIANGULF and the .HALAL/.ISLAM applications. Both were the subject of GAC Early Warnings and both were the subject of concerns expressed by members of the GAC during a GAC meeting. However, how the GAC ultimately treated these two matters and how the GAC articulated them to the Board was decidedly different in each case – with respect to the .HALAL/.ISLAM strings, the GAC provided non-consensus advice to the Board explicitly pursuant to Section 3.1 (subparagraph II) of the Guidebook, noting the concerns expressed by certain GAC members; whereas with respect to the .PERSIANGULF string, the GAC provided no advice but rather merely stated that the GAC had "finalized its consideration" of the .PERSIANGULF string and "does not object" to the application proceeding.

Based on the foregoing, the BAMC believes that treating the statement in the GAC Durban Communiqué regarding .PERISANGULF as if it were non-consensus advice pursuant to Module 3.1 (subparagraph II) of the Guidebook and entering into a dialogue with the relevant members of the GAC to understand the scope of their concerns regarding the .PERSIANGULF application is the best course of action and consistent with the way a similar circumstance (in the .HALAL/.ISLAM matter) has been handled.

The BAMC further recommends that the Board direct the BAMC to review and consider the materials related to the .PERSIANGULF matter, including the materials identified by the Panel in the Final Declaration, and to provide a recommendation to the Board as to whether or not the application for .PERSIANGULF should proceed.

BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC) RECOMMENDATION:

The BAMC recommends that the Board accept that the Panel declared the following: (i) the GCC is the prevailing party in the *Gulf Cooperation Council v. ICANN* IRP; and (ii) ICANN "shall reimburse the GCC the sum of $107,924.16 upon demonstration by [the] GCC that these incurred costs have been paid." The BAMC also recommends that the Board explicitly refute certain of the Panel's underlying factual findings and conclusions. The BAMC also recommends that the Board treat the statement in the GAC Durban Communiqué regarding .PERSIANGULF as if it were non-consensus advice pursuant to Module 3.1 (subparagraph II) of the Guidebook, and that the Board direct the BAMC to review and consider the materials related to the .PERSIANGULF matter, including the materials identified by the Panel in the Final Declaration, and to provide a recommendation to the Board as to whether or not the application for .PERSIANGULF should proceed.

PROPOSED RESOLUTION:

Whereas, ICANN organization received the Final Declaration in the Gulf Cooperation Council (GCC) v. ICANN Independent Review Process (IRP) and the Final Declaration As To Costs (Costs Declaration) in the IRP.

Whereas, among other things, the IRP Panel declared that "the GCC is the prevailing Party," and ICANN "shall reimburse the GCC the sum of $107,924.16 upon demonstration by [the] GCC that these incurred costs have been paid." (Final Declaration at pg. 45; Costs Declaration at pg. 6, V.2.)

Whereas, the Panel recommended that the "Board take no further action on the '.persiangulf' gTLD application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the '.persiangulf' gTLD." (Final Declaration at pg. 44, X.2.)

Whereas, in accordance with Article IV, section 3.21 of the applicable version of the Bylaws, the Board considered the Final Declaration and the Costs Declaration at its

meeting on 16 March 2017, and determined that further consideration and analysis was needed.

Whereas, the Board Accountability Mechanisms Committee (BAMC) conducted the requested further consideration and analysis, and has recommended that: (i) the Board treat the statement in the Governmental Advisory Committee (GAC) Durban Communiqué regarding .PERSIANGULF as if it were non-consensus advice pursuant to the second advice option in Module 3.1 (subparagraph II) of the Applicant Guidebook; and (ii) the Board direct the BAMC to review and consider the materials related to the .PERSIANGULF matter, including the materials identified by the Panel in the Final Declaration, and to provide a recommendation to the Board as to whether or not the application for .PERSIANGULF should proceed.

Resolved (2018.03.XX.XX), the Board accepts that the Panel declared the following: (i) the GCC is the prevailing party in the *Gulf Cooperation Council v. ICANN* IRP; and (ii) ICANN "shall reimburse the GCC the sum of $107,924.16 upon demonstration by [the] GCC that these incurred costs have been paid."

Resolved (2018.03.XX.XX), the Board directs the President and CEO, or his designee(s), to take all steps necessary to reimburse the GCC in the amount of US$107,924.16 in furtherance of the IRP Panel's Costs Declaration upon demonstration by the GCC that these incurred costs have been paid.

Resolved (2018.03.XX.XX), the Board directs the BAMC: (i) to follow the steps required as if the GAC provided non-consensus advice to the Board pursuant to Module 3.1 (subparagraph II) of the Applicant Guidebook regarding .PERSIANGULF; (ii) to review and consider the relevant materials related to the .PERSIANGULF matter; and (iii) to provide a recommendation to the Board as to whether or not the application for .PERSIANGULF should proceed.

PROPOSED RATIONALE:

The Gulf Cooperation Council (GCC) initiated Independent Review Process (IRP) proceedings challenging the New gTLD Program Committee's (NGPC's) decision on 10 September 2013 that "ICANN will continue to process [the .PERSIANGULF] application in accordance with the established procedures in the [Guidebook.]" (*See* Resolution 2013.09.10.NG03 (Annex 1), available at https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-09-10-en#2.c.) The GCC objected to the application for .PERSIANGULF submitted by Asia Green IT System Ltd. (Asia Green) due to what the GCC described as a long-standing naming dispute in which the "Arab nations that border the Gulf prefer the name 'Arabian Gulf'" instead of the name "Persian Gulf." (*See* IRP Request, ¶ 3, available at https://www.icann.org/en/system/files/files/gcc-irp-request-05dec14-en.pdf.)

IRP Panel Final Declaration:

On 19 October 2016, the three-member IRP Panel (Panel) issued its Final Declaration as to the merits (Final Declaration) (https://www.icann.org/en/system/files/files/irp-gcc-final-declaration-24oct16-en.pdf). On 15 December 2016, the Panel issued its Final Declaration As To Costs (Costs Declaration) (https://www.icann.org/en/system/files/files/irp-gcc-final-declaration-costs-15dec16-en.pdf). The Panel's findings and recommendation are summarized below, and available in full at https://www.icann.org/resources/pages/gcc-v-icann-2014-12-06-en.

The Panel declared the GCC to be the prevailing party, and declared that the "action of the ICANN Board with respect to the application of Asia Green relating to the '.persiangulf' gTLD was inconsistent with the Articles of Incorporation and Bylaws of ICANN." (Final Declaration at pgs. 44-45, X.1, X.3.) Specifically, the Panel stated that: (i) "we have no evidence or indication of what, if anything, the Board did assess in taking its decision. Our role is to review the decision-making process of the Board, which here was virtually non-existent. By definition, core ICANN values of transparency and fairness were ignored." (emphasis omitted); (ii) "we conclude that the ICANN Board failed to '*exercise due diligence and care in having a reasonable amount of facts in front of them*' before deciding, on 10 September 2013, to allow the '.persiangulf' application to proceed"; and (iii) "[u]nder the circumstances, and by definition, the Board members

could not have '*exercise[d] independent judgment in taking the decision, believed to be in the best interests of the company*', as they did not have the benefit of proper due diligence and all the necessary facts."

The Panel further declared that "ICANN is to bear the totality of the GCC's costs in relation to the IRP process," and "shall reimburse the GCC the sum of $107,924.16 upon demonstration by GCC that these incurred costs have been paid." (Costs Declaration at pg. 6, V.2.)

The Panel premised its declaration on its conclusion that the Board's reliance upon the explicit language of Module 3.1 of the Guidebook was "unduly formalistic and simplistic" (Final Declaration at ¶ 126), and that the Board should have conducted a further inquiry into and beyond the Durban Communiqué as it related to the application even though the Governmental Advisory Committee (GAC) "advice" provided in the Durban Communiqué indicated that the GAC had "finalized its consideration" of the application and "does not object" to the application proceeding. In effect, the GAC's communication to the ICANN Board provided no advice regarding the processing of .PERSIANGULF. The Panel, however, disagreed, stating that: "As we see it, the GAC sent a missive [in the Durban Communiqué] to the ICANN Board that fell outside all three permissible forms for its advice. The GAC's statement in the Durban Communiqué that the GAC '*does not object*' to the application reads like consensus GAC advice that the application should proceed, or at very least non-consensus advice that the application should proceed. Neither form of advice is consistent with Module 3 .1 of the Guidelines." (Final Declaration at ¶ 127.) The Panel further stated that: "Some of the fault for the outcome falls on the GAC, for not following its own principles. In particular, GAC Operating Principle 47 provides that the GAC is to work on the basis of consensus, and *'[w]here consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.'* The GAC chair clearly did not do so." (Final Declaration at ¶ 128.) According to the Panel, "[i]f the GAC had properly relayed [the] serious concerns [expressed by certain GAC members] as formal advice to the ICANN Board under the second advice option in Module 3.1 of the Guidebook, there would necessarily have been further inquiry by and dialogue with the Board." (Final

Declaration at ¶ 129.) "It is difficult to accept that ICANN' s core values of transparency and fairness are met, where one GAC member can not only block consensus but also the expression of serious concerns of other members in advice to the Board, and thereby cut off further Board inquiry and dialogue." (Final Declaration at ¶ 130.)

In sum, the Panel stated that it "is not convinced that just because the GAC failed to express the GCC's concerns (made in their role as GAC members) in the Durban Communiqué that the Board did not need to consider these concerns." (Final Declaration at ¶ 131.) The Panel further stated that the Board should have reviewed and considered the GAC member concerns expressed in the GAC Durban Meeting Minutes (which, it should be noted, were posted by the GAC in November 2013 – one month after the NGPC's 10 September 2013 Resolution to continue processing the .PERSIANGULF application), the "pending Community Objection, the public awareness of the sensitivities of the 'Persian Gulf'-'Arabian Gulf' naming dispute, [and] the Durban Communiqué itself[, which] contained an express recommendation that '*ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance*.'" (Final Declaration at ¶ 131.)

In addition, the Panel concluded that "the GCC's due process rights" were "harmed" by the Board's decision to proceed with the application because, according to the Panel, such decision was "taken without even basic due diligence despite known controversy." (Final Declaration at ¶ 148.) And, according to the Panel, the "basic flaws underlying the Board's decision cannot be undone with future dialogue." (Final Declaration at ¶ 148.) The Panel therefore recommended that "the ICANN Board take no further action on the '.persiangulf' gTLD application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the '.persiangulf' gTLD." (Final Declaration at pg. 44, X.2.)

Prior Board Consideration:

The Board considered the Final Declaration and the Costs Declaration at its 16 March 2017 meeting. After thorough review and consideration of the Panel's findings and recommendation, the Board noted that the Panel may have based its findings and

recommendation on what may be unsupported conclusions and/or incorrect factual premises.

The Board determined that further consideration and analysis of the Final Declaration was needed, and directed the ICANN President and CEO, or his designee(s), to conduct or cause to be conducted a further analysis of the Panel's factual premises and conclusions, and of the Board's ability to accept certain aspects of the Final Declaration while potentially rejecting other aspects of the Final Declaration. (*See* Resolution 2017.03.16.08, available at https://www.icann.org/resources/board-material/resolutions-2017-03-16-en#2.b.)

Board Accountability Mechanisms Committee Review and Recommendation:
Pursuant to the Board's directive, the Board Accountability Mechanisms Committee (BAMC) reviewed the Final Declaration, conducted an analysis regarding the Board's ability to accept certain aspects of the Final Declaration while rejecting other aspects, and considered various options regarding the Panel's recommendation that the "Board take no further action on the '.persiangulf' gTLD application, and in specific not sign a registry agreement with Asia Green, or any other entity, in relation to the '.persiangulf' gTLD." After extensive analysis and discussion, the BAMC has recommended that the Board refute certain of the Panel's underlying factual findings and conclusions, and that the Board treat the advice in the GAC Durban Communiqué regarding .PERSIANGULF as if it were non-consensus advice pursuant to Module 3.1 (subparagraph II) of the Guidebook. Among other things, the BAMC understands that this would require the Board (or its designees) to enter into a dialogue with the relevant members of the GAC to understand the scope of their expressed concerns regarding the .PERSIANGULF application. The BAMC further recommends that the Board direct the BAMC to review and consider the materials related to the .PERSIANGULF matter, including the materials identified by the Panel in the Final Declaration, and provide a recommendation to the Board as to whether or not the application for .PERSIANGULF should proceed.

Board Consideration:
The Board agrees with the BAMC's recommendations. The Board notes that it does not

agree with or accept all of the Panel's underlying factual findings and conclusions. For instance:

- The Panel concluded that the statement in the GAC Durban Communiqué that the GAC "does not object" to the .PERSIANGULF application was, in effect, "consensus GAC advice that the application should proceed, or at the very least non-consensus advice that the application should proceed." (Final Declaration at ¶ 127.) The Board, however, considers the statement in the Durban Communiqué, indicating that the GAC had "finalized its consideration" of the application and "does not object" to the application proceeding, as effectively providing no advice to the Board regarding the processing of .PERSIANGULF. The Board, nevertheless, can appreciate that the Panel, given all of the information before it, thought that the GAC should have provided non-consensus advice pursuant to Module 3.1 (subparagraph II) in order to convey the concerns expressed by certain GAC members.

- The Panel concluded that the Board should have but did not consider "the Durban Minutes, the pending Community Objection, and public awareness of the sensitivities of the 'Persian Gulf'-'Arabian Gulf' naming dispute," along with the "express recommendation" in the Durban Communique "that '*ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance*.'" (Final Declaration at ¶ 131.) The Board takes issue with the Panel's conclusion. The Panel appears to not have given proper recognition to, among other things, the Board's awareness of and sensitivity to the GCC's concerns.

- The Panel concluded that the Board was required to request and review the minutes of the GAC Durban meeting in making its determination regarding the .PERSIANGULF application. According to the Panel, "[i]t is difficult to accept that the Board was not obliged to consider the concerns expressed in the Durban Minutes if it had access to the Minutes. If it was not given the Minutes, it is equally difficult to accept that the Board - as part of basic due diligence - would

not have asked for draft Minutes concerning GAC discussions of such a geo-politically charged application." (Final Declaration at ¶ 134.) The Board disagrees. First, the GAC Durban meeting minutes were not available when the NGPC passed its resolution regarding the .PERSIANGULF application – the GAC Durban Communiqué was issued on 18 July 2013; the NGPC passed its Resolution on 10 September 2013; and the GAC Durban meeting minutes were posted by the GAC in November 2013. Second, GAC meeting minutes do not constitute a communication from the GAC to the ICANN Board, and do not constitute GAC advice.

- In making its recommendation, the Panel concluded that: "Here, given the harm caused to the GCC's due process rights by the Board's decision - taken without even basic due diligence despite known controversy - to allow Asia Green's '.persiangulf' gTLD application to go forward, adequate redress for the GCC requires us to recommend not a stay of Asia Green's application but the termination of any consideration of '.persiangulf' as a gTLD. The basic flaws underlying the Board's decision cannot be undone with future dialogue. In recognition of ICANN's core values of transparency and consistency, it would seem unfair, and could open the door to abuse, for ICANN to keep Asia Green's application open despite the history. If issues surrounding '.persiangulf' were not validly considered with the first application, the IRP Panel considers that any subsequent application process would subject all stakeholders to undue effort, time and expense." The Board disagrees and takes issue with the Panel's conclusion that further dialogue would be futile. If, as the Panel has stated, the advice provided by the GAC should have included "the full range of views expressed by members" of the GAC and thereby "necessarily" triggered "further inquiry by and dialogue with the Board" pursuant to the non-consensus advice option in Module 3.1 (subparagraph II) of the Guidebook, then such further dialogue should occur before a determination is made regarding the current .PERSIANGULF application.

Notwithstanding the refuted points noted above, the Board has determined that it should treat the GAC statement in the Durban Communiqué regarding .PERSIANGULF as if it were non-consensus advice pursuant to the second advice option in Module 3.1 (subparagraph II) of the Guidebook. The Board is taking this action for primarily two reasons. First, as the Panel noted, and the Board agrees, the GAC "sent a missive [in the Durban Communiqué] that fell outside all three permissible forms for its advice." The Board appreciates how the Panel thought that the GAC advice should have been provided pursuant to the second advice option in Module 3.1 (subparagraph II) of the Guidebook. Specifically, the Panel noted, among other things, that: (i) the .PERSIANGULF application was the subject of a GAC Early Warning; (ii) the GAC's Beijing Communiqué (in April 2013) indicated that "further consideration may be warranted" at the GAC's Durban meeting (in July 2013) regarding the .PERSIANGULF string; and (iii) certain GAC members expressed concerns about .PERSIANGULF during the GAC Durban meeting. While the Board was aware of the GAC Early Warning and the Beijing Communiqué, it did not have access to the GAC Durban meeting minutes when it passed the 10 September 2013 Resolution to continue processing .PERSIANGULF, unlike the Panel, which did have access to those minutes when it issued its Final Declaration.

Second, and in the light of the Final Declation in this matter, the Board notes inconsistencies in the GAC's handling and communications regarding the .PERSIANGULF and the .HALAL/.ISLAM applications. Both were the subject of GAC Early Warnings and both were the subject of concerns expressed by members of the GAC during a GAC meeting. However, how the GAC ultimately treated these two matters and how the GAC articulated them to the Board was decidedly different in each case: (a) with respect to the .HALAL/.ISLAM strings, the GAC provided non-consensus advice to the Board explicitly pursuant to Section 3.1 (subparagraph II) of the Guidebook, indicating that: "The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed." (Beijing Communiqué, available at https://www.icann.org/en/system/files/correspondence/gac-to-

board-18apr13-en.pdf); whereas (b) with respect to the .PERSIANGULF string, the GAC provided no advice but rather stated that the GAC had "finalized its consideration" of the .PERSIANGULF string and "does not object" to the application proceeding (Durban Communiqué, available at http://archive.icann.org/en/meetings/durban2013/bitcache/GAC%20Communiqu%C3%A9%20-%20Durban,%20South%20Africa.pdf).

Based upon the foregoing, and in order to address the Panel's concerns, the Board believes that treating the statement in the GAC Durban Communiqué regarding .PERISANGULF as if it were non-consensus advice pursuant to Module 3.1 (subparagraph II) of the Guidebook and entering into a dialogue with the relevant members of the GAC to understand the scope of their concerns regarding the .PERSIANGULF application is the best course of action and consistent with the way a similar circumstance (in the .HALAL/.ISLAM matter) has been handled. In addition, conducting a further review and consideration of the materials related to the .PERSIANGULF matter, including the materials identified by the Panel in the Final Declaration (those available both before and after the NGPC's 10 September 2013 Resolution to continue processing the .PERSIANGULF application), would assist the Board in conducting an evaluation of the current .PERSIANGULF application as well as provide the GCC with the due process that the Panel considered was not previously adequate.

Taking this decision is within ICANN's Mission as the ultimate result of ICANN's consideration of this matter is a key aspect of coordinating the allocation and assignment of names in the root zone of the domain name system (DNS). Further, the Board's decision is in the public interest, taking into consideration and balancing the goals of resolving outstanding new gTLD disputes, respecting ICANN's accountability mechanisms and advisory committees, and abiding by the policies and procedures set forth in the Applicant Guidebook, which were developed through a bottom-up consensus-based multistakeholder process over numerous years of community efforts and input.

Taking this decision is expected to have a direct financial impact on the ICANN organization in the amount the Panel declared ICANN should reimburse the prevailing party. Entering into a dialogue with the relevant GAC members and conducting a further review of the materials regarding the .PERSIANGULF matter will not have any direct impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

Submitted By:	Amy Stathos, Deputy General Counsel
Date Noted:	2 March 2018
Email:	amy.stathos@icann.org

ICANN BOARD SUBMISSION NO. 2018-03-15-2c

TITLE:	**Consideration of the Asia Green IT System v. ICANN Independent Review Process Final Declaration**
PROPOSED ACTION:	**For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Final Declaration in the Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. (AGIT) v. ICANN Independent Review Process (IRP) was issued on 30 November 2017 (Attachment A to Reference Materials). The IRP challenged the decision of the ICANN Board (acting through the New gTLD Program Committee (NGPC)) to accept the Governmental Advisory Committee (GAC) non-consensus advice against AGIT's applications for .HALAL and .ISLAM, and to place AGIT's applications on hold until AGIT resolved the concerns raised by the objecting countries and the Organisation of Islamic Cooperation (OIC).

The IRP Panel declared AGIT to be the prevailing party, and that the ICANN Board acted in a manner inconsistent with ICANN's Articles of Incorporation and Bylaws. Specifically, the IRP Panel stated that: (i) the GAC Beijing Communiqué contained "only 58 words concern[ing] the .HALAL and .ISLAM applications, utilizing vague and non-descript terms [such as "religious sensitivities"]," which "is insufficient to comply with the open and transparent requirements mandated by Core Value 7," and therefore, "any reliance on the Beijing Communiqué by the Board in making their decision would necessarily be to do so without a reasonable amount of facts"; (ii) the Board's decision to place the applications on hold violated Core Value 8, which, according to the Panel, requires the Board "to make, rather than defer (for practical purposes, indefinitely), a decision…as to the outcome of [AGIT's] applications"; and (iii) "the 'On Hold' status is neither clear nor prescribed" in the Guidebook, Articles or Bylaws and, by placing the applications "on hold," ICANN "created a new policy" "without notice or authority" and "failed to follow the procedure detailed in Article III (S3 (b)), which is required when a new policy is developed."

While not describing it as a "recommendation," the Panel recommended that, in order to be consistent with Core Value 8, "the Board needs to promptly make a decision on the application[s] (one way or another) with integrity and fairness." The Panel noted, however, that "nothing as to the substance of the decision should be inferred by the parties from the Panel's opinion in this regard. The decision, whether yes or no, is for [the ICANN Board]."

After consideration of the Final Declaration, the Board Accountability Mechanisms Committee (BAMC) concluded that further review of the GAC non-consensus advice (as defined in Section 3.1 subparagraph II of the Applicant Guidebook) is needed in order to make a final determination regarding the processing of AGIT's applications. The BAMC therefore recommended that the Board direct the BAMC to re-review the GAC non-consensus advice as well as the subsequent communications from or with objecting and supporting parties, in light of the Final Declaration, and provide a recommendation to the Board as to whether or not the applications for .HALAL and .ISLAM should proceed.

BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC) RECOMMENDATION:

The BAMC recommends that the Board direct the BAMC to re-review the GAC non-consensus advice (as defined in Section 3.1 subparagraph II of the Applicant Guidebook) as well as the subsequent communications from or with objecting and supporting parties, in light of the Final Declaration, and provide a recommendation to the Board as to whether or not the applications for .HALAL and .ISLAM should proceed.

PROPOSED RESOLUTION:

Whereas, the Final Declaration in the Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. (AGIT) v. ICANN Independent Review Process (IRP) was issued on 30 November 2017.

Whereas, among other things, the IRP Panel declared that AGIT is the prevailing party, and ICANN shall reimburse AGIT the sum of US$93,918.83. (Final Declaration at ¶¶ 151, 156.)

Whereas, in the Final Declaration, the Panel recommended that, in order to be consistent with Core Value 8, "the Board needs to promptly make a decision on the application[s] (one way or another) with integrity and fairness," and noted that "nothing as to the substance of the decision

should be inferred by the parties from the Panel's opinion in this regard. The decision, whether yes or no, is for [the ICANN Board]." (Final Declaration at ¶ 149.)

Whereas, the Board Accountability Mechanisms Committee (BAMC) has recommended that the Board direct the BAMC to re-review the Governmental Advisory Committee (GAC) non-consensus advice (as defined in Section 3.1 subparagraph II of the Applicant Guidebook) as well as the subsequent communications from or with objecting and supporting parties, in light of the Final Declaration, and provide a recommendation to the Board as to whether or not the applications for .HALAL and .ISLAM should proceed.

Whereas, in accordance with Article IV, section 3.21 of the applicable version of the Bylaws, the Board has considered the Final Declaration.

Resolved (2018.03.15.XX), the Board accepts that the Panel declared the following: (i) AGIT is the prevailing party in the Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. v. ICANN IRP; and (ii) ICANN shall reimburse AGIT the sum of US$93,918.83.

Resolved (2018.03.15.XX), the Board directs the President and CEO, or his designee(s), to take all steps necessary to reimburse AGIT in the amount of US$93,918.83 in furtherance of the Panel's Final Declaration.

Resolved (2018.03.15.XX), the Board directs the BAMC to re-review the GAC non-consensus advice (as defined in Section 3.1 subparagraph II of the Applicant Guidebook) as well as the subsequent communications from or with objecting and supporting parties, in light of the Final Declaration, and provide a recommendation to the Board as to whether or not the applications for .HALAL and .ISLAM should proceed.

PROPOSED RATIONALE:

Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. (AGIT) initiated Independent Review Process (IRP) proceedings challenging the decision of the ICANN Board (acting through the New gTLD Program Committee (NGPC)) to accept the Governmental Advisory Committee (GAC) non-consensus advice against AGIT's applications for .HALAL and .ISLAM (Resolution 2013.06.04.NG01, available at https://www.icann.org/resources/board-material/resolutions-new-

gtld-2013-06-04-en), and to place AGIT's applications on hold until AGIT resolved the concerns raised by the objecting countries and the Organisation of Islamic Cooperation (OIC) (Resolution 2014.02.05.NG01, available at https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a).

After reviewing and considering the Final Declaration and all relevant materials, the Board Accountability Mechanisms Committee (BAMC) concluded that re-reviewing the GAC non-consensus advice (as defined in Section 3.1 subparagraph II of the Applicant Guidebook) as well as the positions advanced by both supporting and opposing parties would afford the Board a fuller understanding of the sensitivities regarding the .HALAL and .ISLAM gTLDs and would assist the Board in making its determination as to whether or not AGIT's applications should proceed. The BAMC therefore has recommended that the Board direct the BAMC to re-review the GAC non-consensus advice as well as the subsequent communications from or with objecting and supporting parties, in light of the Final Declaration, and provide a recommendation to the Board as to whether or not the applications for .HALAL and .ISLAM should proceed.

AGIT applied for .HALAL and .ISLAM. The Guidebook allows for the GAC to provide a GAC Early Warning, which is a notice to an applicant that "the application is seen as potentially sensitive or problematic by one or more governments." On 20 November 2012, the United Arab Emirates (UAE) and India submitted Early Warning notices through the GAC against both applications, expressing serious concerns regarding a perceived lack of community involvement in, and support for, the AGIT applications. (Early Warnings, available at https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings.) On 13 March 2013, the Telecommunications Regulatory Authority of the UAE filed community objections with the International Centre for Expertise of the International Chamber of Commerce (ICC) against AGIT's applications (Community Objections).

After a regularly-scheduled meeting, on 11 April 2013, the GAC issued its Beijing Communiqué, wherein it provided non-consensus advice to the Board pursuant to Section 3.1 subparagraph II of the Guidebook, indicating that: "The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the

applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed." (Beijing Communiqué, available at https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf.)

On 4 June 2013, the NGPC adopted the NGPC Scorecard setting forth the NGPC's response to the portion of the GAC's Beijing Communiqué regarding .ISLAM and .HALAL, stating: "The NGPC accepts [the GAC] advice. […] Pursuant to Section 3.1ii of the [Guidebook], the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted." (NGPC Scorecard, available at https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-04jun13-en.pdf .) On 18 July 2013, Board members and the relevant GAC members attended a meeting in Durban, South Africa to understand the scope of the GAC's concerns regarding the Applications.

Subsequently, several additional entities expressed concern regarding AGIT's applications:

- The State of Kuwait sent a letter to ICANN expressing its support for the UAE's Community Objections and identifying concerns that AGIT did not receive the support of the community, that the applications are not in the best interest of the Islamic community, and that the strings "should be managed and operated by the community itself through a neutral body that truly represents the Islamic community such as the Organization of Islamic Cooperation." (25 July 2013 letter, available at https://www.icann.org/en/system/files/correspondence/al-qattan-to-icann-icc-25jul13-en.pdf.)
- The Lebanese GAC representative wrote to the NGPC Chair objecting to the AGIT applications, stating that the "operation of these TLDs must be conducted by a neutral non-governmental multi-stakeholder group representing, at least, the larger Muslim community." (4 September 2013 letter, available at https://www.icann.org/en/system/files/correspondence/hoballah-to-chalaby-et-al-04sep13-en.pdf.)
- The Secretary General of the Organisation of Islamic Cooperation (OIC) wrote to the GAC Chair that, as an "intergovernmental organization with 57 Member States spread across four continents" and the "sole official representative of 1.6 billion Muslims," the

OIC opposed the operation of the .ISLAM and .HALAL strings "by any entity not representing the collective voice of the Muslim people." (4 November 2013 letter, available at https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-11nov13-en.pdf.)

- The Ministry of Communication and Information Technology of Indonesia sent a letter to the NGPC Chair "strongly object[ing]" to the .ISLAM string but "approves" the .HALAL string if operated "properly and responsibly." (24 December 2013 letter, available at https://www.icann.org/en/system/files/correspondence/iskandar-to-chalaby-24dec13-en.pdf.)

On 24 October 2013, the ICC panel considering the UAE's Community Objections rendered two Expert Determinations denying the UAE's Community Objections against AGIT's applications. On 11 November 2013, the ICANN Board Chair sent a letter to the GAC Chair referencing the OIC's 4 November 2013 letter and stating, "[n]ow that the objection proceedings have concluded, the NGPC must decide what action to take on these [.ISLAM and .HALAL] strings. Before it does so, it will wait for any additional GAC input during the Buenos Aires meeting or resulting GAC Communiqué. The NGPC stands ready to discuss this matter further if additional dialog would be helpful."

On 21 November 2013, the GAC issued its Buenos Aires Communiqué, stating: "[The] GAC took note of letters sent by the OIC and the ICANN Chairman in relation to the strings .islam and .halal. The GAC has previously provided advice in its Beijing Communiqué, when it concluded its discussions on these strings. The GAC Chair will respond to the OIC correspondence accordingly, noting the OIC's plans to hold a meeting in early December. The GAC chair will also respond to the ICANN Chair's correspondence in similar terms." (GAC Buenos Aires Communiqué, available at https://www.icann.org/en/system/files/correspondence/gac-to-board-20nov13-en.pdf.) On 29 November 2013, the GAC Chair responded to the ICANN Board Chair, confirming that the GAC has concluded its discussion on AGIT's applications and stating that "no further GAC input on this matter can be expected." (29 November 2013 letter, available at https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-29nov13-en.pdf.)

On 4 December 2013, AGIT wrote to the ICANN Board Chair, proposing certain governance mechanisms for the .ISLAM and .HALAL strings, noting: "At the core of this governance mechanism is the Policy Advisory Council (PAC) contemplated for each TLD. PACs will be deployed for both .ISLAM and .HALAL. They will serve as non-profit governing boards made up of leaders from many of the world's various Muslim communities, governments, and organizations. The PACs will oversee policy development for the TLDs, to ensure they are coherent and consistent with Muslim interests. AGIT has invited the leading Muslim organisations, including the Organization for Islamic Cooperation (OIC), to become members of the PACs." (4 December 2013 letter, available at https://www.icann.org/en/system/files/correspondence/abbasnia-to-crocker-04dec13-en.pdf.)

Nevertheless, on 19 December 2013, the OIC sent a letter to the ICANN Board Chair, stating that the foreign ministers of the OIC's 57 Muslim member states had unanimously adopted a resolution officially objecting to the operation of the .ISLAM and .HALAL TLDs "by any entity not reflecting the collective voice of the Muslim People[.]" (19 December 2013 letter, available at https://www.icann.org/en/system/files/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf.) On 30 December 2013, AGIT submitted a letter to the ICANN Board Chair challenging the nature and extent of the OIC's opposition to AGIT's applications, reiterating its commitment to the proposed multistakeholder governance model of .ISLAM and .HALAL described in its 4 December 2013 letter, and requesting to proceed to the contracting phase. (30 December 2013 letter, available at https://www.icann.org/en/system/files/correspondence/abbasnia-to-crocker-30dec13-en.pdf.)

On 5 February 2014, the NGPC adopted a scorecard stating: "The NGPC takes note of the significant concerns expressed during the dialogue, and additional opposition raised, including by the OIC, which represents 1.6 billion members of the Muslim community." (5 February 2014 Scorecard, available at https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a.) In addition, the NGPC directed the transmission of a letter from the NGPC, via the ICANN Board Chair, to AGIT acknowledging AGIT's stated commitment to a multistakeholder governance model, but also noting the substantial opposition to AGIT's applications (7 February 2014 Letter): "Despite these commitments, a substantial body of opposition urges ICANN not to delegate the strings .HALAL and .ISLAM.… There seems to be

a conflict between the commitments made in your letters and the concerns raised in letters to ICANN urging ICANN not to delegate the strings. Given these circumstances, the NGPC will not address the applications further until such time as the noted conflicts have been resolved." (7 February 2014 Letter, available at https://www.icann.org/en/system/files/correspondence/crocker-to-abbasnia-07feb14-en.pdf.) The 7 February 2014 Letter listed the Gulf Cooperation Council, the OIC, the Republic of Lebanon, and the government of Indonesia as four parties that "all voiced opposition to the AGIT applications," and provided some detail as to the concerns of each.

In December 2015, AGIT initiated an independent review of the ICANN Board's decision to accept the GAC's non-consensus advice against AGIT's applications for .HALAL and .ISLAM and to place AGIT's applications on hold until AGIT resolved the concerns raised by the objecting countries and the OIC.

On 30 November, the IRP Panel (Panel) issued its Final Declaration in the AGIT IRP (https://www.icann.org/en/system/files/files/irp-agit-final-declaration-30nov17-en.pdf). The Panel's findings are summarized below, and available in full at https://www.icann.org/resources/pages/irp-agit-v-icann-2015-12-23-en.

The Panel declared AGIT to be the prevailing party, and that ICANN shall reimburse AGIT for its IRP fees and costs in the sum of US$93,918.83. (Final Declaration at ¶¶ 151, 156.) The Panel declared that the ICANN Board (through the NGPC) acted in a manner inconsistent with ICANN's Articles of Incorporation (Articles) and Bylaws. Specifically, the Panel declared that the "closed nature and limited record of the [GAC] Beijing meeting provides little in the way of 'facts' to the Board. Of the 6 page [Communiqué] produced by the GAC to the Board, only 58 words concerned the .HALAL and .ISLAM applications, utilizing vague and non-descript terms [such as "religious sensitivities"]." "[T]his manner and language is insufficient to comply with the open and transparent requirements mandated by Core Value 7." Therefore, "any reliance on the Beijing Communiqué by the Board in making their decision would necessarily be to do so without a reasonable amount of facts." "[T]o be consistent with Core Value 7 requires ICANN to act in an open and transparent manner." (Final Declaration at ¶¶ 81, 83, 148.) The Panel further declared that the Board "acted inconsistently with Core Value 8" by placing AGIT's

applications "on hold" – "to be consistent with Core Value 8 requires [ICANN] to make, rather than defer (for practical purposes, indefinitely), a decision…as to the outcome of [AGIT's] applications." (Final Declaration at ¶ 149.) In the view of the Panel, "the 'On Hold' status is neither clear nor prescribed" in the Guidebook, Articles or Bylaws. The Panel declared that by placing the applications "on hold," ICANN "created a new policy" "without notice or authority" and "failed to follow the procedure detailed in Article III (S3 (b)), which is required when a new policy is developed." (Final Declaration at ¶¶ 113, 119, 150.)

While not describing it as a "recommendation," the Panel recommended that, in order to be consistent with Core Value 8, "the Board needs to promptly make a decision on the application[s] (one way or another) with integrity and fairness." The Panel noted, however, that "nothing as to the substance of the decision should be inferred by the parties from the Panel's opinion in this regard. The decision, whether yes or no, is for [the ICANN Board]." (Final Declaration at ¶ 149.)

The Panel further concluded that, with regard to whether the Board had a reasonable amount of facts before it: "The lack of detailed content obtained from the meetings held with concerned GAC members, along with insufficient information on the revisions needed by [AGIT] for their Governance model, coupled with the significant reliance placed on the views of the objectors leads this Panel to the view that the Board" did not have a reasonable amount of facts in front of it and, therefore, "did not exercise appropriate due diligence and care" and "did not exercise independent judgment." (Final Declaration at ¶¶ 106-107.)

Regarding whether or not sufficient guidance was provided as to how AGIT was to resolve the conflicts with the objectors, the Panel stated that: "[T]he manner in which [AGIT] and objectors were to resolve such conflicts, ascertain whether this had been successfully completed, upon which timescale and adjudged by whom was not and is not clear. Whilst it is clear that the Board required conflicts to be resolved, [AGIT] was left with little guidance or structure as to how to resolve the conflicts, and no information as to steps needed to proceed should the conflicts be resolved." (Final Declaration at ¶ 109.) The Panel further stated that "[t]he Panel accepts the contention made by ICANN that it is not ICANN's responsibility to act as intermediary, however it is the opinion of this Panel that insufficient guidance is currently available as to the means and

methods by which an 'On Hold' applicant should proceed and the manner in which these efforts will be assessed. Without such guidance, and lacking detailed criteria, the applicant is left, at no doubt significant expense, to make attempts at resolution without any benchmark or guidance with which to work." (Final Declaration at ¶ 110.)

In coming to its conclusions, the Panel also rejected many of AGIT's other assertions that the Board violated ICANN's Articles and Bylaws. For instance:

- Pursuant to the Guidebook, members of the NGPC engaged in a dialogue with relevant members of the GAC at a meeting in Durban to understand the scope of the GAC's concerns regarding the applications. The Panel disagreed with AGIT that all GAC members and all Board members were required to meet in Durban to discuss the GAC non-consensus advice because "there is no reference to quorum requirements in [the Guidebook] and it is practical that relevant and concerned members be in attendance," and "neither the Bylaws nor the Guidebook mandate full Board attendance." (Final Declaration at ¶¶ 89, 92.)
- The Panel rejected AGIT's argument that the Board acted with a conflict of interest because ICANN staff members were communicating with the OIC when the Board was considering the applications; the Panel noted that the ICANN staff members were tasked with "outreach" and they did not have "decision making authority." (Final Declaration at ¶ 101.)
- Despite AGIT's arguments to the contrary, the Panel stated that the Board was not required to follow the findings of expert panelists' decisions (in this instance, the Independent Objector and the Community Objection Expert), and that "the Board is entitled to decide in a manner inconsistent with expert advice." (Final Declaration at ¶ 127.)
- The Panel found that the Board was not required to approve .ISLAM and .HALAL just because the .KOSHER application proceeded to delegation, as AGIT had argued. (Final Declaration at ¶ 133.)
- Contrary to AGIT's argument, the Panel found that the example scenarios listed in the Guidebook regarding the "ways in which an application may proceed through the

evaluation process" "cannot be considered binding" on ICANN and did not "provide applications with a guaranteed route of success." (Final Declaration at ¶¶ 138-139.)

Taking this decision is within ICANN's Mission as the ultimate result of ICANN's consideration of this matter is a key aspect of coordinating the allocation and assignment of names in the root zone of the domain name system (DNS). Further, the Board's decision is in the public interest, taking into consideration and balancing the goals of resolving outstanding gTLD disputes, respecting ICANN's accountability mechanisms and advisory committees, and abiding by the policies and procedures set forth in the Applicant Guidebook, which were developed through a bottom-up consensus-based multistakeholder process over numerous years of community efforts and input.

Taking this decision is expected to have a direct financial impact on the ICANN organization in the amount the Panel declared ICANN should reimburse the prevailing party. Further review and analysis of the GAC non-consensus advice (as defined in Section 3.1 subparagraph II of the Applicant Guidebook) and communications from or with objecting and supporting parties, in light of the Final Declaration, will not have any direct impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

Submitted By:	Amy Stathos, Deputy General Counsel
Date Noted:	27 February 2018
Email:	amy.stathos@icann.org

ICANN BOARD PAPER NO. 2018.03.15.2d

TITLE: **Appointment of Independent Auditors**

PROPOSED ACTION: **For Board Approval**

EXECUTIVE SUMMARY:

Article XVI of the Internet Corporation for Assigned Names and Numbers (ICANN) Bylaws (http://www.icann.org/general/bylaws.htm) requires that after the end of the fiscal year, the books of ICANN must be audited by certified public accountants, which shall be appointed by the Board.

The Audit Committee has recommended that the Board approve BDO LLP and BDO members firms as independent auditors for the fiscal year ended 30 June 2018 for any annual ICANN independent audit requirement, the Board is now being asked to approve the Audit Committee's recommendation.

AUDIT COMMITTEE RECOMMENDATION:

The Audit committee has recommended that the Board authorize the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms as ICANN's annual independent auditor for the fiscal year ended 30 June 2018 for any annual independent audit requirements in any jurisdiction.

PROPOSED RESOLUTION:

Whereas, Article XVI of the ICANN Bylaws (http://www.icann.org/general/bylaws.htm) requires that after the end of the fiscal year, the books of ICANN must be audited by certified public accountants, which shall be appointed by the Board.

Whereas, the Board Audit Committee has discussed the engagement of the independent auditor for the fiscal year ending 30 June 2018, and has recommended that the Board authorize the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms.

Resolved (2018.XX.XX.XX), the Board authorizes the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms as the auditors for the financial statements for the fiscal year ending 30 June 2018.

RATIONALE FOR RESOLUTION:

The audit firm BDO LLP and BDO member firms were engaged for the annual independent audits of the fiscal year end 30 June 2016 and the fiscal year 30 June 2017. Based on the report from ICANN organization and the Audit Committee's evaluation of the work performed, the committee has unanimously recommended that the Board authorize the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms as ICANN's annual independent auditor for the fiscal year ended 30 June 2018 for any annual independent audit requirements in any jurisdiction.

This furthers ICANN's accountability to its Bylaws and processes, and the results of the independent auditors' work will be publicly available.

Taking this decision is both consistent with ICANN's Mission and in the public interest as the engagement of an independent auditor is in fulfilment of ICANN's obligations to undertake an audit of ICANN's financial statements and helps serve ICANN's stakeholders in a more accountable manner.

This decision will have no direct impact on the security or the stability of the domain name system. There is a fiscal impact to the engagement that has already been budgeted. There is no impact on the security or the stability of the DNS as a result of this appointment.

This is an Organizational Administrative Function not requiring public comment.

Submitted by:	Xavier Calvez
Position:	CFO
Date Noted:	26 February 2018
Email:	Xavier.calvez@icann.org

AGENDA – 15 MARCH 2018 REGULAR BOARD Meeting – 60 minutes

Last Updated 11 March

Time, etc.	Agenda Item	Shepherd
Assembly, Roll Call & Consent Agenda Vote	**1. Consent Agenda**	
20 min	1.a. Board Meeting Minutes from 4 February 2018	John Jeffrey
	1.b. Outsource Service Provider Zensar Contract Approval	Ron da Silva
	1.c. New GNSO Voting Thresholds to address post-transition roles and responsibilities of the GNSO as a Decisional Participant in the Empowered Community - Proposed Changes to ICANN Bylaws	Matthew Shears
	1.d. Initiating the Second Review of the Country Code Names Supporting Organization (ccNSO)	Khaled Koubaa
	1.e. Transfer of the .TD (Chad) top-level domain to l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC)	Khaled Koubaa

AGENDA – 15 MARCH 2018 REGULAR BOARD Meeting – 60 minutes

Last Updated 11 March

Time, etc.	Agenda Item	Shepherd
	1.f. Thank You to Local Host of ICANN 61 Meeting	Cherine Chalaby
	1.g. Thank You to Sponsors of ICANN 61 Meeting	Cherine Chalaby
	1.h. Thank you to Interpreters, Staff, Event and Hotel Teams of ICANN 61 Meeting	Cherine Chalaby
	2. Main Agenda	
Discussion & Decision 40 min	2.a. Next Steps in Community Priority Evaluation Process Review	Chris Disspain
	2.b. Further Consideration of the Gulf Cooperation Council Independent Review Process Final Declarations	Chris Disspain
	2.c. Consideration of the Asia Green IT System Independent Review Process Final Declaration	Chris Disspain
	2.d. Board approval of appointment of the independent auditor for the fiscal year ending 30 June 2018	Lousewies van der Laan
	2.e. AOB	

Directors and Liaisons,

Attached below please find Notice of date and time for a Regular Meeting of the ICANN Board of Directors.

15 March 2018 – Regular Meeting of the ICANN Board of Directors - at 21:00 UTC (17:00 AST San Juan). This Board meeting is estimated to last approximately 60 minutes.

https://www.timeanddate.com/worldclock/fixedtime.html?msg=Regular+Meeting+of+the+ICANN+Board&iso=20180315T17&p1=226&ah=1

Some other time zones:

15 March 2018 – 02:00pm PDT Los Angeles
15 March 2018 – 10:00pm CEST Brussels
16 March 2018 – 06:00am JST Tokyo

REGULAR MEETING OF THE ICANN BOARD

Consent Agenda:

- Approval of Board Meeting Minutes
    - 04 FEBRUARY 2018
- Outsource Service Provider Zensar Contract Approval
- New GNSO Voting Thresholds to address post-transition roles and responsibilities of the GNSO as a Decisional Participant in the Empowered Community - Proposed Changes to ICANN Bylaws
- Initiating the Second Review of the Country Code Names Supporting Organization (ccNSO)
- Transfer of the .TD (Chad) top-level domain to l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC)
- Thank You to Local Host of ICANN 61 Meeting
- Thank You to Sponsors of ICANN 61 Meeting
- Thank you to Interpreters, Staff, Event and Hotel Teams of ICANN 61 Meeting

Main Agenda

- Next Steps in Community Priority Evaluation Process Review
- Further Consideration of the Gulf Cooperation Council Independent Review Process Final Declarations
- Consideration of the Asia Green IT System Independent Review Process Final Declaration
- Board approval of appointment of the independent auditor for the fiscal year ending 30 June 2018
- Any Other Business

MATERIALS – You can access the Board Meeting materials, when available, in Google Drive here:

Contact Information Redacted

If you have trouble with access, please let us know and we will work with you to assure that you get access to the documents.

If call information is required, it will be distributed separately.

If you have any questions, or we can be of assistance to you, please let us know.

John Jeffrey

General Counsel & Secretary, ICANN

John.Jeffrey@icann.org <John.Jeffrey@icann.org>

<mailto:John.Jeffrey@icann.org <mailto:John.Jeffrey@icann.org> >

Contact Information Redacted