

## Regulations regarding Incompatibilities, Capacities and Suitability

Approved: February 2018

The spirit of these regulations is that members of LACNIC's elected bodies and/or candidates to one of LACNIC's elected bodies must serve "in an individual capacity, not as representatives of any member organization to which they may belong" (Art. 20, Chapter V, LACNIC Bylaws), placing LACNIC and the LACNIC community above all other interests. Thus, the regulations seek to favor the independence and capacity of the members of LACNIC's elected bodies and/or candidates to LACNIC's elected bodies, as well as their knowledge of the LACNIC community. They have been developed by the LACNIC Board based on the powers and responsibilities set forth in Article 20 of the LACNIC Bylaws, which states that:

*"Based on the principles established herein, the Board of Directors shall establish objective, detailed criteria for defining the grounds for incompatibility as well as for borderline or doubtful cases. The regulations and any successive modifications thereto may only be implemented if they are approved prior to any electoral act.*

This document is a working version of the regulations, which under development and may therefore be modified and updated periodically by the Board, specifying in each successive modification the date on which they were approved. In any case, according to the Bylaws, these regulations will only become effective if they are approved by the Board and published before the start of an election.

### Examples to help clarify the regulations.

Several examples are presented to help clarify these regulations. Some are lacking their full details, as they only focus on the elements of the section of the regulations in which they appear. These examples are fictitious.

#### **I. Criteria or rules for interpreting the incompatibility which states that not more than one or two members of an elected body may be citizens of the same country of the Region:**

**a) Citizen of a country, but with obvious ties to a country other than that of his/her citizenship.** A member of, or a candidate to, one of LACNIC's elected bodies may have obvious ties with a country other than that of which they are a citizen. In this case, applying the theory of reality established in the LACNIC Bylaws, the Electoral Commission may declare the existence of an incompatibility due to citizenship based on the country with which they have obvious ties.

Some of the elements the Electoral Commission might consider for the purpose of determining the existence of obvious ties (though not all of them need to be present) are as follows:

- i. Having lived in that country for an extended period of time (not less than 5 years);
- ii. Having been in a relationship as an employee, consultant, advisor, director and/or shareholder of organizations and/or companies in that country for an extended period of time (not less than 5 years);
- iii. Having family members who have lived in that country for an extended period of time (not less than 5 years);
- iv. Having participated in organizations related to the Internet community in that country;
- v. Having met the requirements to obtain citizenship in that country;
- vi. Lack of obvious ties with the country of citizenship, i.e., a substantial number of items i) - v) of this document are not met in relation to the country of citizenship.

**Example 1a. Citizen of one country, with obvious ties to another.**

A **candidate** to the LACNIC Board of Directors is a citizen of country A, but she has been working in her own company and living in country B for 7 years. Her close family circle also resides in country B, where the candidate participates in industry organizations. If two\* individuals from country B were currently serving on the LACNIC Board, even though she is a citizen of country A, this candidate has more obvious ties with country B and therefore an incompatibility exists.

\*One in the case of the Commissions

**Example 1b. Citizen of a country, with obvious ties to this country.**

A **candidate** to the LACNIC Board of Directors is a citizen of country A and has been working in his own company and living in country B for two years. His close family circle also resides in country B, from where the candidate participates in industry organizations of country A (his country of origin) such as the local Internet Society chapter and local IGF efforts. If two\* individuals from country B were currently serving on the LACNIC Board, even though he resides in country B, this candidate has obvious ties with country A and therefore no incompatibility exists.

\*One in the case of the Commissions

**Example 1c. Citizen and resident of a country.**

Two **candidates** running for a position on the LACNIC Board of Directors are citizens of country A, have participated interchangeably in different national or foreign corporations, and lived abroad for periods shorter than three years, yet both are currently living in country A and have no significant ties with the community in any other country. If a citizen of country A is already serving on the Board and he/she will continue to serve in the following period, this would limit the election to only one of the two **candidates** described above, provided that one of the two received a sufficient number of votes. In the situation above, if both citizens of country A were to receive the two highest numbers of votes, only the first

candidate would be eligible to serve on the Board. However, there would be no way to determine this until the voting period has ended.

**b) Birthright citizenship or citizenship by birth.** In many countries of the region, citizenship may be determined by the place of birth and/or by the citizenship of one or both parents, without the citizen having any other ties with the country.

On the other hand, the laws or national constitutions of these countries establish that their nationality and/or citizenship is inalienable, for which reason the individual cannot renounce such citizenship.

If this were to occur, provided that the person who acquired the birthright citizenship or citizenship by birth does not maintain other obvious ties with the country (as established based on the criteria set forth in item a) above), such citizenship will not be taken into account for the purpose of determining potential incompatibilities for members of, or candidates to, LACNIC's elected bodies.

**Example 2a. Birthright citizenship or citizenship by birth.**

A **candidate** to the LACNIC Board has spent her entire professional life working for different companies in country A, where her close family circle lives and she participates in local industry associations. In addition, she maintains birthright citizenship in country B. If two citizens of country B are already serving on the Board, regardless of the fact that the **candidate's** nationality is also country B and that the limit of two directors from said country has already been reached, the **candidate** clearly has stronger ties to country A and no additional ties to country B and its local Internet community, so in this case there is no incompatibility.

**Example 2b. Birthright citizenship or citizenship by birth.**

A current **member of the LACNIC Board** is a citizen of country A and recently finalized the process to have his citizenship by birth of country B recognized. Even if there are already two directors from country B serving on the Board, regardless of their ties to the community of one or the other country, the Bylaws specify that there is no need to resign when a person who is already serving on an elected body acquires a new citizenship. Once the period for which the member was elected has ended, if the member wishes to run for the position once again, it would have to be established whether, in addition to the new citizenship, the candidate maintains any other ties to country B in order to determine whether an incompatibility exists that would prevent them from being elected to the Board (in the assumption that there are already two directors from country B).

**II. Criteria or rules for interpreting the incompatibility which states that not more than one member of an elected body may be an employee, consultant or advisor of the same Company or Organization and/or of one of its Related Companies, whether established in the same country or not.**

Article 20 of the LACNIC Bylaws specifies the incompatibility due to relationships with the same company and includes the following example:

*“Not more than one Director may have employment, consultancy or advisory relationships with the same Company or Organization and/or with one of its Related Companies, whether established in the same country or not”.*

*“In order to determine whether or not this incompatibility exists, the following criteria shall be considered: whether the relationship is in a paid or honorary capacity; the influence that the Company or Organization may exert in relation to the candidate's election and the background that makes the candidate eligible; the position held by the candidate within the Company or Organization; and the degree of influence that the Company or Organization may have over the individual once he/she occupies the position, or that the individual may have over the Director of said Company or Organization, or vice versa, for reasons of hierarchy or control.”*

These regulations clarify the scope of the text contained in the Bylaws to help the Electoral Commission decide on potential incompatibilities.

a) **Same Company.** Any company that is part of the same business group, whether the Company itself or part of a group of companies, directly or indirectly controlled by the same person or business group.

“Controlled” means any company: (i) where fifty percent (50%) or more is directly or indirectly property of the same physical person, family or controlling business group; (ii) where accounts are consolidated with those of the physical person, family or controlling business group in their financial statements, if they prepare consolidated financial statements; and/or (iii) having direct or indirect control.

As applied to a Company, “indirect control” means any Person: (i) where one physical person, family or controlling business group can exercise more than fifty percent of the voting rights at the shareholders' assembly as a result of being direct or indirect shareholders; the conclusion of an usufruct, pledge, trust and/or similar contracts; or agreements with other shareholders; and/or (ii) whose members of the board may be appointed or removed by the physical person, family or controlling business group without the need to have more than fifty percent of the voting rights at the shareholders' assembly.

Thus, this incompatibility applies if a candidate or member of one of LACNIC's elected bodies is part of the same Company, is part of the same group of companies, or is part of a company directly or indirectly controlled by the same person or controlling business group as another.

In this sense, the Bylaws expressly extend the incompatibility to related companies, whether located in the same country or not.

**Example 3a. Same Company.**

One of LACNIC's directors works for company ABC S.A., while a **candidate** to the LACNIC Board works for company XYZ S.A. Both companies are controlled by business group Telecom JKI Ltd. In this case an incompatibility exists for the **candidate** to the Board.

**Example 3b. Same Company.**

A **candidate** to the LACNIC Board is Operations Manager at company ABC S.A., while another works at the Operations Control Department under the Operations Manager at the same company, ABC S.A. In this case it is not possible to determine the existence of an incompatibility prior to the elections, as the incompatibility would only exist if both candidates were to be elected.

**b) Relationships in a paid or honorary capacity.** The Bylaws distinguish between relationships in a paid or honorary capacity, specifying a greater degree of incompatibility when a member of the elected body and/or candidate to the elected body has a paid relationship than when the relationship is honorary.

**Relationship in a paid capacity.** Relationships where one party pays a salary and/or offers a significant financial benefit to another, either through an employment relationship or through a contract for the provision of paid advisory or counseling services, participation in the Board or other management positions, and/or holding shares in said Company.

**Relationship in an honorary capacity.** Relationships where the person is not paid a salary and does not receive any other financial benefit. *Per diem* and/or the reimbursement of reasonable expenses are not considered financial benefits. Reasonable expenses should be interpreted as *per diem* and/or reimbursement of expenses that are reasonably in line with the covered amount (i.e., not a hidden salary).

**Example 4a. Relationships in a paid capacity.**

One of LACNIC's directors works for company ABC S.A., while a **candidate** to the LACNIC Board has a fixed-term contract to serve as a consultant for company XYZ S.A. Both companies are controlled by Telecom JKI Ltd. In this case an incompatibility exists.

**Example 4b. Paid relationships with false/incomplete information.**

One of LACNIC's directors works for company ABC S.A. but did not include this information in the questionnaire which all candidates must complete. Meanwhile, a **candidate** to the LACNIC Board has a fixed-term contract to serve as a consultant for company XYZ S.A. Both companies are controlled by Telecom JKI Ltd. In this case it would not be possible to determine the

incompatibility, as the Electoral Commission would not have the elements to do so. However, if a complaint is submitted regarding the omission of this information and the Electoral Commission confirms the existence of the incompatible relationship, or if the Commission considers that having withheld this information has granted the **candidate** an improper advantage, the Electoral Commission may not allow the candidacy (if the information is available to them prior to the election) or appointment to the elected body (if the candidate has already been elected). The rationale behind the above is that the spirit of this text is to provide information that will help members make an informed decision regarding members of the elected bodies, in addition to the fact that the candidate would be in breach of the affidavit where he stated that the information was truthful, complete and/or up-to-date.

#### **Example 5. Honorary relationships.**

One of LACNIC's directors works for company ABC S.A. Meanwhile, a **candidate** to the LACNIC Board is serving on the Advisory Council of company XYZ S.A, where he participates in an honorary capacity, not receiving any income or benefits for this activity other than reimbursement of the expenses he reasonably incurs in this activity. Both companies are controlled by Telecom JKI Ltd. In this case **there is no incompatibility**.

**c) Position of hierarchy.** Positions where one of the members of an elected body and/or candidate to an elected body holds a position that allows them to decide or order someone else to decide on matters of the elected organ.

These incompatibilities are analyzed based on the theory of reality, but generally there are elements such as a paid relationship, weight and relevance of the income, and power of decision of the member of the elected body and/or candidate to the elected body who is in a position of hierarchy over the other member and/or candidate. There are differences in the pressure that an Executive Director or CEO can exert over an employee and the pressure that a member of a collegiate body (the Board) can exert over a senior manager.

#### **Example 6a. Honorary relationship, in a position of hierarchy.**

One of LACNIC's directors works for company ABC S.A. Meanwhile, a **candidate** to the LACNIC Board is serving on the **Board of Directors** of controlling company Telecom JKI Ltd., where he participates in an honorary capacity, not receiving any income or benefits for this activity other than reimbursement of the expenses he reasonably incurs in this activity. In this case there is an incompatibility for the candidate, not because the relationship is in a paid capacity (which it is not), but because the candidate is a position of hierarchy over the

**director and may therefore affect his decisions.**

**Example 6b. Honorary relationship, not in a position of hierarchy.**

One of LACNIC's directors works for company ABC S.A. Meanwhile, a **candidate** to the LACNIC Board is serving on the 20-member Advisory Council of organization XYZ A.C, where he participates in an honorary capacity, not receiving any income or benefits for this activity other than reimbursement of the expenses he reasonably incurs in this activity. In this case **there is no incompatibility**, first because the relationship is honorary, second because the candidate is not in a position of hierarchy over the director, as he is part of an advisory body, not the Board of Directors.

**Example 6d. Honorary relationship, not in a position of hierarchy.**

One of LACNIC's directors is a serving on the Board of Directors of a regional Internet organization, where he participates in an honorary capacity or for a small fee which represents a very small part of his earnings. Meanwhile, a **candidate** to the LACNIC Board is also serving on the Board of this same regional Internet organization, where he also participates in an honorary capacity, or even for a small fee which represents a very small part of his earnings. In this case there is no incompatibility, as the relationship is an honorary capacity or for a very small fee, and also because the candidate is not in a position of hierarchy over the director or vice versa, so one will not affect the decisions of the other.

The criteria detailed in the paragraphs above are meant to help guide the Electoral Commission when determining the degree of incompatibility among members of the elected bodies and candidates to such bodies based on their participation in the same company (item a), financial influence (item b) or hierarchy (item c).

**III. Mandatory Capacity Criteria.** In addition to the incompatibility criteria based on which a candidate may be excluded from serving on LACNIC's elected bodies, the LACNIC Board understands that a set of positive aspects exist which represent the minimum capacities a member of LACNIC's elected bodies should have, the lack of which, because of their objective nature, might lead the Fiscal Commission to exclude a candidate from participating in the corresponding election.

**a. Legal**

- i. Legal age: Members of, or candidates to, LACNIC's elected bodies must be of legal age in the country of which they are citizens, but never younger than 18 years of age, so they are

- able to assume legal responsibilities (such as signing the confidentiality agreement, signing minutes or resolutions, etc.).
- ii. Civil freedom: Members of, or candidates to, LACNIC's elected bodies must not be deprived of their freedom; generally speaking, their civil rights must not be limited in any way. Regarding the latter requirement, having to request authorization from the Government or the Courts is acceptable, provided that such authorization is not denied for more than two (2) trips in a row, or three (3) trips during the same year.
  - iii. Legal capacity to trade: Members of, or candidates to, LACNIC's elected bodies must not be in the process of being, or have been, declared bankrupt, insolvent and/or similar, and any such incapacity to trade must have been resolved/overcome at least five years prior to submitting the candidacy.

**Example 7. Legal Criteria.**

A **candidate** to the LACNIC Board has been named Entrepreneur of the Year in a country of the region but is not of legal age to assume legal responsibilities with LACNIC. In this case, the candidate does not have the required technical capacities.

**b. Health**

- i. Physical health: Their health must allow members of LACNIC's elected bodies to go where needed to fulfill their role and travel as many times as necessary, even if such trips involve flights lasting more than ten hours.
- ii. Mental health: They must be in possession of their full mental capacity and not subject to any interdiction, guardianship or curatorship arrangement.

**Example 8. Health criteria.**

A member of the LACNIC Board has undergone an interdiction process and it has been determined that he is mentally incapable of performing the responsibilities required by the LACNIC Board in a satisfactory manner. In this case, the member would no longer meet the capability criteria.

- IV. Desirable Suitability Criteria:** The LACNIC Board of Directors understands that the following suitability criteria of a more subjective nature are also desirable for the candidates running for a position on one of LACNIC's elected bodies in order to meet the principle of defending the interests of the LACNIC community. Otherwise, it would be more difficult (though not impossible) to understand such interests.

Therefore, while in principle the Electoral Commission will not be required to assess the following criteria, these will be included in the questionnaire which candidates to LACNIC's elected bodies must complete when submitting their candidacy for the purpose of informing LACNIC Members.

Whenever possible, LACNIC staff will verify the authenticity of any declared ties to LACNIC's extended community.

**a. Professional.** In order to favor candidates with relevant knowledge of LACNIC's extended community and the regional Internet community in general, the following ties will be considered:

- i. Ties to LACNIC's extended community:
  1. Currently having or having recently had some level of participation in LACNIC's elected bodies; or
  2. Currently participating or having recently participated in one of the regional technical forums (FLIP6, Security Forum, Interconnection Forum, Network Operators Forum); or
  3. Currently participating or having recently participated or organized events sponsored by LACNIC (LACNIC, LACNIC On The Move, AMPARO, etc.).
- ii. Ties to the regional Internet community:
  1. Recent professional or employment ties (whether as an employee, advisor, consultant, manager and/or shareholder) with organizations which have been assigned number resources in the region (LACNIC members); or
  2. Recent professional or employment ties (whether as an employee, advisor, consultant, manager and/or shareholder) with organizations that are part of the regional technical community.

#### **Example 9a. Professional ties.**

A **candidate** to the LACNIC Board is a citizen of country A, has worked in country B in the past but is currently living outside the LACNIC region, is currently working in the pharmaceutical industry, and has no significant ties to the regional Internet community, even though he can prove he has ties to LACNIC's extended community as he attended a few events more than seven years ago. In this case, despite not meeting the desired suitability criteria, these criteria do not prevent the candidate from running in the election. While the Electoral Commission does not wish to – nor should they – express an opinion in this regard, it is desirable to make this information available to Members so that they can assess the candidate's suitability for the position.

#### **Example 9b. Professional ties with false information.**

A **candidate** to the LACNIC Board is a citizen of country A, has worked in country B in the past but is currently living outside the LACNIC region, and is currently working in the pharmaceutical industry. However, the candidate did not include this information in the questionnaire he received from the LACNIC staff. In addition, he has no significant ties to the regional Internet community, even though he can prove he has ties to LACNIC's extended community as he attended a few events more than seven years ago. While the Electoral Commission does not wish to – nor should they – express an opinion in this regard, if they were to receive a complaint regarding a falsehood or omission of relevant information, or if the Commission were to decide to investigate the case at their own initiative, they would have the authority to determine the lack of capacity to be a candidate and/or serve in the position. The rationale behind the above is that the spirit of this text is to provide information that will help members make an informed decision regarding members of the elected organs, in addition to the fact that the candidate would be in breach of the affidavit where he stated that the information was truthful, complete and/or up-to-date.

## V. **General.**

To preserve the spirit of these regulations, the Electoral Commission may state their opinions during the different stages of the electoral process, i.e., before, during, or after the voting stage.

Whenever possible, in order to anticipate and prevent any inconvenience that would go against the spirit of favoring the independence, capacity, and the LACNIC community's knowledge of the members of elected bodies and/or candidates participating in LACNIC's electoral processes, the Electoral Commission should attempt to decide and announce their decision regarding cases of incompatibility and incapacity before the voting phase. Likewise, in the case of incompatibilities or incapacities which, because of their very nature, may only be determined once the voting has concluded, the Commission may do so later in the process, even once the electoral process has been completed.

The calendar for each election must include a period for the reception of claims for their discussion by the Electoral Commission before and after voting takes place.

The candidate questionnaire must require truthful, complete and up-to-date information (personal data, citizenship, relationships and capabilities relevant to these regulations) and authorize their publication in order to facilitate the work of the Electoral Commission. It must also include an affidavit by the candidate stating that the information provided is truthful, complete and up-to-date.

While these regulations represent a step forward in formalizing the criteria that support the Electoral Commission in determining incompatibilities, it is likely that other, more complex aspects are beyond the scope of this work. In any case, if the Commission becomes aware of falsehoods or omissions in the information provided by the candidates, information which in the opinion of the Commission represents an advantage for the candidate or member of the elected body, it may restrict their candidacy or appointment, as specified in the Bylaws (Chapter V, art. 24.):

*This commission shall be responsible for overseeing and certifying the electoral processes of the bodies established under these Bylaws, including contesting or restricting to one the positions and candidacies at stake due to incompatibilities (having the authority to eliminate and/or restrict the candidacy of one or more contested candidates and/or candidates investigated at the Electoral Commission's own initiative).*

The decisions of the Electoral Commission are final and may not be appealed. These decisions will be made with the level of information that can be gathered within the time frame established by the electoral calendar and always to the best of the Commission's knowledge and ability. Consequently, in some cases the Commission may decide not to issue a decision for lack of relevant details.

#### **When may the Electoral Commission express their decision?**

In the following cases, the Electoral Commission may determine the existence of an incompatibility **before** voting takes place:

- Incompatibility in Example 1a.
- Absence of incompatibility in Example 1b.
- Absence of incompatibility in Example 2a.
- Absence of incompatibility in Example 2b.
- Incompatibility in Example 3a.
- Incompatibility in Example 4a.
- Incompatibility in Example 4b, provided that the information is received in a timely manner.
- Absence of incompatibility in Example 2a.
- Incompatibility in Example 6a.
- Absence of incompatibility in Examples 6b and 6c.
- Incapacity in Example 7.

In the following cases, the Electoral Commission may determine the existence of an incompatibility **after** voting takes place if the assumptions are met:

- Incompatibility in Example 1c.
- Absence of incompatibility in Example 3b.
- Incompatibility in Example 4b, provided that the information is received in a timely manner.

In the following cases, after receiving a claim or at its own initiative **at the moment of learning of the situation**, the Electoral Commission

may determine the incompatibility or incapacity of a candidate or member of the elected organ, or the falsehood, omission or lack of information provided by a candidate or member of the elected organ, and decide actions to solve them:

- Falsehood/omission/lack of information in Example 4b.
- Incapacity in Example 8.
- Patent and/or notorious falsehood of the information presented in Example 9b (provided there are elements do so).