

Report to the Members of dotAsia Regarding the 2023 Board Elections.

Cheryl Langdon-Orr - Chair of the 2023 Elections Committee

Email regarding this matter should be addressed to electioncommittee@board.dot.asia

Final Report Date: 31 October 2023

Author Note: *The drafting of this report has carried out by the Chair of the dotAsia 2023 Election Committee (EC) with the assistance of independent legal counsel* as an additional task beyond the normal term and requirements for an EC outlined in the Board Election Procedures (BEP) for the 2023 Elections. The EC undertook this task at the behest of the 2022/23 dotAsia Board (in their pre-AGM Board Meeting on February 26 2023). This investigation, review and analysis role is an exceptional activity well beyond the usual mandate of a dotAsia Election Committee (EC), which is - "... the Election Committee will oversee the election process, declare the election results, and resolve procedural disputes, if any." as the nature of the concerns raised and complaints received went beyond what could be usually considered as 'procedural' and specifically relating to the conduct of the election. The independent Election Chair requested that the EC workspace, email list, etc. (normally closed after the reporting to the Board after the Election results are finalised and announced and the dotAsia AGM is completed, be kept open.*

*Access was arranged to all pertinent and discoverable materials related to the claims, concerns and complaints received regarding the 2023 election for a third-party independent review of the facts (unrelated in any way to dotAsia) by experienced expert legal counsel; a "...highly regarded..." legal services provider to corporations, business and governments "...throughout Australia and internationally..." established in 1885, *Maddocks¹; It should also be noted that for aspects of this review and reporting that required Hong Kong commercial law specific expertise the (again independent from dotAsia), firm of GPS Legal² was retained through Maddocks.*

¹ Maddocks see www.maddocks.com.au and <https://au.linkedin.com/company/maddocks>

² GPS Legal (Georgiou Payne Stewien LLP) see <https://www.gpslegal.asia/> and <https://www.linkedin.com/company/georgiou-payne-stewien-llp/?originalSubdomain=hk>

Disclosure Note on Privacy and Transparency in these Matters:

All inserted and appended input from the legal council included in this report is provided in an unredacted and 'as is' state; no anonymisation has been applied to the material, and organisational and personal names of complainants and the nature and details of their complaints as received to the Elections Committee email address; names of entities and individuals identified in these complains as well as the dates of communications and details of their concerns as received and investigated are included and were matched to the archived records of the activities and communications of the 2023 Elections Committee by the legal team undertaking the investigation.

Abstract:

After the close of the voting for the 2023 dotAsia, running up to and around the dotAsia AGM in February and now more recently, several concerns, complaints, claims and accusations regarding the validity of the electoral processes and results were raised and repeated. This report outlines the independent review of all these matters and details the resulting establishment of facts and discoveries made: a cross-checking with dotAsia the relevant governance documents and procedures of dotAsia was conducted relating to all these matters, which resulted in an outcome showing **no** evidence of non-compliance with existing dotAsia procedures or Corporate documentation being found, but did suggest, as was foreshadowed at the AGM by the 2023 Elections Committee, that a recommendation of a by-election being held (out of an abundance of caution and care for fairness and transparency) was the best course of action. In addition, several more general recommendations regarding risk minimisation and good governance practices are being made for consideration by the dotAsia Board. Additional guidance was sought and received relating to Hong Kong Companies' Ordinance on methodology to be used around such a by-election and also included possible issues raised by the author specifically relating to quorum and continuity of Board function during such an action.

Keywords: dotAsia; 2023 Elections; 2023 Election Review; Recommendations regarding dotAsia Elections; dotAsia Governance; Report to dotAsia Membership.

DotAsia Board Election Committee for the Board Elections 2023:

- 1. Election Chair: Ms. Cheryl Langdon-Orr**
- 2. Election Committee Co-Sponsor Member community representative:** to monitor election for seat(s) returned from the Sponsor Member category: **Mr. Kuo-Wei Wu (TWIGF)**
- 3. Election Committee Sponsor Member community representative:** to monitor election for seat(s) returned from the Co-Sponsor Member category: **Mr. Andrew Molivurae (.vu)**

In accordance with the BEP Section 2.1: The email address to be used for the Nominations process is [boardelections\[at\]board.dot.asia](mailto:boardelections@board.dot.asia).

In accordance with the BEP Section 2.4: Any complaint, disputes and appeals regarding the conduct of the election must be lodged in writing with the Election Chair to [electioncommittee\[at\]board.dot.asia](mailto:electioncommittee@board.dot.asia)

The [usual] term of the Election Committee for the Board Elections 2023 is from December 22, 2022, to February 26, 2023. In accordance with the [Board Elections Procedures \(BEP\)](#), the Election Committee will oversee the election process, declare the election results, and resolve procedural disputes, if any.

Preamble:

It should be noted that as per the detailed third-party scrutineers' report provided to all Members along with the announcement of the election results for the 2023 dotAsia Board Elections, all votes cast using the BigPulse voting platform were only by those voters who had complied with the confirming and establishing the electorate processes at the end of 2022, as per the Board Election Procedures. The detailed process for this confirmation system was provided by dotAsia and the Elections Committee in various announcements running up to and around the Election. It was in keeping with the regular system used in previous years.

This then-established electorate had individualised voting credentials prepared for them from the BigPulse voting platform, and these ballots went to the then 'registered voters' for the 2023 election cycle directly from the platform. Voters who cast their ballot had their details sent to the third-party scrutineer, again via the platform and were then contacted by the scrutineer via the scrutineer's email (not the voting platform) system, requesting that they confirm the validity and accuracy of their vote cast within the specified deadline (as per the Board Election Procedures, before any vote was included in the final tally made on the voting platform, again as outlined in the election procedures.

Only a single vote where the details of the vote were confirmed by the scrutineer from any voter was counted in the tally. There was no duplication of any vote by any Member, and only fully scrutinised and confirmed, in compliance with the procedures, votes were included in the final tally. As previously noted in our reporting to the dotAsia AGM and also reviewed in this investigation, a Member (.CN) was, (due to an eventual discovery around the deadline for casting ballots, of an IP blocking issue) given dispensation by the Elections Committee to cast their vote within 24 hrs of the removal of the IP block that had prevented them from previously succeeding with their ballot. This single vote was also subject to the same scrutineer requirements. As the Election Committee previously reported, it was cast and ratified and then able to be included in the final results tally in short order (well within the hours of extension they had been granted).

This final tally of votes duly cast and confirmed by the scrutineer resulted in a 4-way tie for three board seats to be allocated after the candidate in receipt of the most votes from the required geographic sub-region seat in this election was established, and as per the Board Election Procedures, a randomised selection of these tied candidates was held by BigPulse before the final results (inclusive of the .CN vote) were made available to the Election Committee, and then announced. As also reported to the Members at the AGM, this random 'drawing of lots' was physically conducted by BigPulse staff in isolation and was in absolute keeping with the Board Election Procedures. The voting platform usually makes such random selections in the case of a tie automatically, but with the additional requirement for the geographic seat to be 1st established, there was an additional (at cost) set-up required on the platform, and this had not been approved for the 2023 election, it has been recommended, however, that it is an important feature to utilise and that it is undertaken before any future dotAsia Election cycle.

A copy of the scrutineers' report is appended to this report for your convenience. Any other 'information' regarding the details of votes cast stated by other than the contracted scrutineer must be considered, at best, mere hearsay, unlikely to be accurate and may not be information sourced from the actual caster and confirmer of member ballots.

The 2023 Elections Committee took the confidentiality of the details of the votes cast (i.e. a matter between the voter and the scrutineer) very seriously, and whilst they 'could' access the details, they deliberately chose not to unless absolutely necessary and if necessary, should be limited on a case by case bases.

As a result of this independent review, the 2023 Elections Committee can assure the dotAsia Membership and the Board that the conduct of this election was not 'compromised' and was in keeping with the current Board Election Procedures (BEP) and, where applicable, the dotAsia Memorandum and Articles (M&A) further that the actions of the Election Committee were appropriate in the addressing of issues and concerns raised at the time they were raised.

Assessments and Review of Matters Raised

A comprehensive review of all issues raised and encountered within the 2023 dotAsia Board election cycle was carried out by Maddocks and is detailed in Appendixes 2 and 3 of this report. It should also be noted that all meetings and proceedings of the 2023 Election Committee were audio and visually recorded using a Zoom platform and that these recordings, along with all email correspondence, relevant corporate documentation and additional discovery material, were made available to the investigating legal counsel to assist in this review. It should be further noted that this review encompassed **all** actions taken by the 2023 Elections Committee during this election cycle and was not limited to the various claims, concerns and matters raised by some members of the organisation around the conduct of and results from the election.

Additional guidance and advice were sought and received relating to Hong Kong Companies' Ordinance on matters of methodology recommended around such a by-election and to ascertain if any possible issues were raised specifically relating to quorum and continuity of Board function during such an action. The advice received regarding these matters can be found in Appendix 4 of this report. This advice also includes clarity with an 'Optimal Procedure' to conduct the proposed by-election; Notes the validity of Board decisions made prior to the by-election and newly constituted Board; and states that once the irregularly appointed 'Affected Directors' cease acting as directors that **"... the remaining directors (including the two directors appointed by the Co-Sponsor Members) can continue to exercise the powers granted to the Board notwithstanding that there are four vacancies in place of the Affected Directors."** section 16 page 3 of the GPS Legal advice of 18 October 2023.

Key Recommendations:

In sections 5.4 and 5.5 of the Maddocks report, they note the apparent uncertainty of the effect of the .AM's letter of resignation (as to when it was received and ultimately considered by the Board) and the inclusion of the .AM vote in the polling, and they recommend (as previously foreshadowed by the Election Committee Chair during the discussion around the time of the 2023 AGM as one

likely outcome of this Review) that a by-election for the affected Sponsor membership class is recommended to be conducted.

The matter is whether the recommended by-election relating to the 'Affected Directors' from the irregularity regarding the inclusion of the .AM's vote in the ballot and tally in this membership class should be conducted for the three non-geographic sub-regional seats or for all four seats, including the geographically required one in the Sponsor Membership class, which was considered subsequently to the provision of the main review and reporting by Maddocks they "... considered the scope of the proposed by-election and whether the board election can be re-run just for the three ballot positions that don't fill a regional seat." and recommended that "... Given that two of the nominees were from the relevant region, the election should be re-run for all four of the available positions." email from Michelle Dixon of Maddocks to Cheryl Langdon-Orr June 27 2023.

Attention is drawn to the important and, in my view, essential recommendations from Maddocks to the Board via this Elections Committee investigation stated in their report "While we regard the actions of the Election Committee as appropriate, we recommend that the 'interim' step of disclosing preliminary results prior to the conclusion of the voting period be removed from the election process." as well as the other enumerated recommended changes under part 5 **'Recommendations - Future Elections'** specifically section 5.3 Recommended changes :-

5.3.1 Procedures should be articulated for Election Committee decision-making processes during the election process:

(a) for matters that are not "complaints, disputes and appeals regarding the conduct of the election";

(b) to provide clarification on how Election Committee decisions should be made, in light of section 2.3 of BEP which provides that the individuals on the Election Committee are appointed to "to examine the nomination and voting processes" and specifically are to "be responsible for examining the processes of the election" related to a certain member type. For example, for decisions just impacting a relevant member type should confirmation from the Election Committee member who is responsible for that category of member be obtained, rather than a majority vote.

5.3.2 Express confirmation of the commencement of the dispute resolution time period.

5.3.3 Removal of the 'interim' step of disclosing preliminary results prior to the conclusion of the voting period.

5.3.4 Clearer procedures/clarification on "access to the voting ballots" prior to the ending of the dispute resolution period resolution, including whether this includes results and whether access is also available to other attendees at Election Committee meetings (for example the Board Secretary and the Board Secretariat).

5.3.5 Clearer procedures/clarification on the role of the Board Secretary, the Board Secretariat and the Election Compliance Administrator through the Election process.

5.3.6 Detailed guidelines regarding the drawing of a lot, including whether this is to take place automatically or manually by the voting platform. Consideration should be given to having the drawing of lots automated and conducted by the voting platform.

5.3.7 Timeframes for confirmation of votes by the Scrutineer and consequences if they are not followed.

5.3.8 Clarification of the voter email validation process. This should include bounced email notifications being set up in the voting platform to ensure that any issues with bounced emails are identified at the earliest opportunity.

5.3.9 Inclusion of an express statement that additional time may be afforded to cast votes if there is a technical issue preventing a voter from receiving the voting ballot.

5.3.10 A requirement that an individual voting representative for a Member be specified. To ensure consistency, it may be desirable for the BEP to require a letter from the Member's Board to confirm the voting representative [only if this is considered to be practical].

Outcome 1

Due to the irregularity of the .AM ballot being included in the tally and final results of this election whereas even though it has been concluded that the Election Committee and the Board Secretariate acted appropriately in the inclusion of the vote cast in the tally based on the knowledge that they had relating to the Member at the time. The information regarding Member status based on the email terminating .AM's Membership (received after the electorate was reviewed and ascertained but before the voting period began) should have been brought to the attention of the Board Secretariat, and consequently, the 2023 Election Committee notified, and the voter removed from the BigPulse list of authorised voters; However, as this was not the case and noting that the organisation was still listed as a Member on the dotAsia website at the time of the election and beyond, a by-election for *all* four of the Sponsor class seats of the current Board should be conducted. As noted earlier in this report, specific detail as to an 'Optimal Procedure' to conduct this by-election is included in compliance with Hong Kong Companies' Ordinance and is included in the advice received (and appended) from GPS Legal. It is highly recommended that this advice be read in full.

Outcome 2:

Now notified with this Report, the 'Affected Directors' from the Sponsor membership class appointed in the 2023 election with the irregularity surrounding the .AM vote and under the specific advice from GPS Legal section 7 specifically. "Given the irregularity involved in the appointment of the Affected Directors, the Affected Directors should be treated as not properly appointed or having ceased to hold office (whichever is applicable) such that there are four vacancies in the Board in place of the Affected Directors." **This should take effect immediately.** The same advice also reaffirms the advice from Maddocks and understanding expressed by others that **"... all Board decisions made prior to the discovery that the Affected Directors were**

not duly appointed would not be considered to be invalid.” Sec 12 GPS Legal advice 18 Oct 2023. Further, it is also noted that the Company does not need to move to remove the ‘Affected Directors’ or “... for the ‘Affected Directors’ to resign as they were not duly appointed in the first place” Sec 14 GPS Legal Advice 18 Oct 2023

Outcome 3:

The GPS Legal advice in Section 16 notes that “... **the remaining directors (including the two directors appointed by the Co-Sponsor Members) can continue to exercise the powers granted to the Board notwithstanding that there are four vacancies in place of the Affected Directors.**” further details regarding this ‘caretaker’ Board, dotAsia’s governance documentation, quorum requirements and Hong Kong Companies’ Ordinance are detailed in other sections of the GPS Legal advice.

A handwritten signature in black ink, appearing to read 'C. Langdon-Orr', is written over a light grey rectangular background.

Signed Cheryl Langdon-Orr - EC Chair

On behalf of the 2023 Elections Committee

Date: 31 October 2023

Appendixes:

1. 2023 dotAsia Board Election Scrutineers Report - Abacus CPA Limited, Hong Kong.
2. Review of Matters Raised with Election Committee during and after 2023 Board Election - Maddocks, Melbourne, VIC Australia.
3. Report for DotAsia Organisation Limited: Review of 2023 Election Process - Maddocks, Melbourne, VIC Australia.
4. Advice regarding irregular appointment of directors to the board of DotAsia Organisation Limited ("Company") - Georgiou Payne Stewien LLP, Hong Kong.
5. September update on the progress of the review of matters and expectations from the Final Reporting from the 2023 EC to the dotAsia Board EC. - Cheryl Langdon-Orr, Chair of the 2023 dotAsia Board Election Committee, Glenorie, NSW Australia.

AGREED-UPON PROCEDURES REPORT ON DOTASIA ORGANISATION BOARD ELECTIONS IN 2023

TO DOTASIA ORGANISATION LIMITED

Purpose of this Agreed-Upon Procedures Report and Restriction on Use and Distribution

Our report is solely for the purpose of assisting DotAsia Organisation Limited in monitoring the voting procedures and results and may not be suitable for another purpose. This report is intended solely for Election Committee members, DotAsia Board and DotAsia Members, and should not be used by, or distributed to, any other parties.

Responsibilities of the Engaging Party

DotAsia Organisation Limited has acknowledged that the agreed-upon procedures are appropriate for the purpose of the engagement.

Abacus CPA Limited, as identified by DotAsia Organisation Limited, is responsible for the subject matter on which the agreed-upon procedures are performed.

Practitioner's Responsibilities

We have conducted the agreed-upon procedures engagement in accordance with the Hong Kong Standard on Related Services (HKSRS) 4400 (Revised), *Agreed-Upon Procedures Engagements*. An agreed-upon procedures engagement involves our performing the procedures that have been agreed with DotAsia Organisation Limited, and reporting the findings, which are the factual results of the agreed-upon procedures performed. We make no representation regarding the appropriateness of the agreed-upon procedures.

This agreed-upon procedures engagement is not an assurance engagement. Accordingly, we do not express an opinion or an assurance conclusion.

Had we performed additional procedures, other matters might have come to our attention that would have been reported.

Professional Ethics and Quality Management

We have complied with the ethical requirements in the Code of Ethics for Professional Accountants issued by the Hong Kong Institute of Certified Public Accountants. For the purpose of this engagement, there are no independence requirements with which we are required to comply.

Our firm applies Hong Kong Standard on Quality Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements*, which requires the firm to design, implement and operate a system of quality management including policies or procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

Procedures and Findings

We have performed the procedures described below, which were agreed upon with DotAsia Organisation Limited, on monitoring the voting procedures and results.

1. We assessed and suggested third-party online voting platform by reviewing the third-party online voting platform on security and integrity

- Two trials had been taken from 10th to 12th of January 2023 on testing the procedures and results of the online voting platform (“BigPulse”), especially focus on first-past-the-post voting with geographic requirement and tie-breaker.
- System testing has been performed for the followings:-
 - a. Timeline (including test vote open, reminder for voters yet to vote and vote close)
 - b. Roles of the Election Manager (Primary Poll Election Manager acting as “Election Chair”, Election Compliance Admin and Scrutineer)
 - c. Voting validation
 - d. Results validation

<u>Procedures</u>	<u>Findings</u>
a. Timeline	
<ul style="list-style-type: none"> • Test vote OPEN (BigPulse sent Ballot email to test voters at preset time). 	<ul style="list-style-type: none"> • All test voters received the Ballot email from BigPulse.
<ul style="list-style-type: none"> • Test vote REMINDER (BigPulse sent reminder to test voters yet to vote at preset time). 	<ul style="list-style-type: none"> • All test voters yet to vote received the reminder from BigPulse.
<ul style="list-style-type: none"> • Test vote CLOSE (BigPulse close the poll at preset time). 	<ul style="list-style-type: none"> • Test voters cannot access to vote after Poll closed. • Results sent to Election Managers and Scrutineer. • Same results can be accessed through BigPulse Dashboard. • RAW data can be accessed via BigPulse’s “Support Request”.



Procedures	Findings
b. Roles of Election Managers	
<ul style="list-style-type: none"> • Primary Poll Election Manager (Acting as Election Chair) <ul style="list-style-type: none"> ○ Access poll's dashboard and manual trigger of ballot email including reminder email 	<ul style="list-style-type: none"> ○ Access rights are correctly set and monitoring the trials during the testing period. ○ Access rights and manual trigger of emails were removed after testing period.
<ul style="list-style-type: none"> • Election Compliance Admin <ul style="list-style-type: none"> ○ Access poll's dashboard ○ Assign re-voting rights upon the approval from Election Chair ○ Extract results and email to scrutineer after vote closed 	<ul style="list-style-type: none"> ○ Access rights are correctly set. ○ Re-voting rights tested and functioned correctly. ○ Testing of results extract is satisfied.
<ul style="list-style-type: none"> • Scrutineer <ul style="list-style-type: none"> ○ Access poll's dashboard ○ Copied on all incoming votes ○ Confirm the results of Sponsor Member and Co-Sponsor Member are correct (focus on first-past-the-post voting with geographic requirement and tie-breaker) ○ Received test election results from Election Compliance Admin and confirm against vote ○ Request for RAW data file and confirm against results 	<ul style="list-style-type: none"> ○ Access rights are correctly set and vote validation is done according to the requirement set.
c. Voting validation	
<ul style="list-style-type: none"> • Re-vote 	<ul style="list-style-type: none"> • Re-vote is not allowed by system setting. • Re-vote option can only be released by the confirmation from Election Committee.
<ul style="list-style-type: none"> • Maximum votes 	<ul style="list-style-type: none"> • Voters can only vote for 4 seats at most for Sponsor Member and 1 seat only for Co-Sponsor Memeber
d. Results validation	
<ul style="list-style-type: none"> • Compare voters' information and votes shown in the email and RAW data. 	<ul style="list-style-type: none"> • Results are matched.
<ul style="list-style-type: none"> • Compare the results shown in RAW data and the final test results provided by BigPulse. 	<ul style="list-style-type: none"> • Results are matched.

<ul style="list-style-type: none"> • Test on “First-past-the-post voting with geographic requirement” and “draw winner for last tied vacant seat” 	<ul style="list-style-type: none"> • Both requirements were tested by different scenarios and results are valid for meeting both requirements.
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2. We obtained the results of the votes cast for the Board election, including in the poll results from BigPulse.

<u>Procedures</u>	<u>Findings</u>
<ul style="list-style-type: none"> • Email with vote details were sent from BigPulse once voters voted during the polling period from 30th January 2023 00:00 UTC to 13th February 2023 23:59 UTC. • Received votes results after Poll closed. 	<ul style="list-style-type: none"> • No missing email and all email results were matched to the final results provided by BigPulse. • No irregularities found.

3. We arranged email confirmation from voters and compared the individual details of votes cast included in the summary to the email confirmation received.

<u>Procedures</u>	<u>Findings</u>
<p>a. Send email to voters for confirming their votes. Votes will be counted as valid if voters reply confirmation email in 48 hours.</p> <p>b. Send reminder to voters yet to confirm after 24 hours.</p> <p>c. Acknowledgement of receipt will be sent to voters who have replied the confirmation email.</p> <p>d. Inform Election Committee if there is no reply after 48 hours and follow their recommendation.</p> <p>e. Any special request from voters will be sent to Election Committee for comments and final decision.</p>	<p><u>Sponsor Member</u> 23 out of 24 voters participated in this Board Election.</p> <ul style="list-style-type: none"> • One voter did not confirm his votes in 48 hours. <ul style="list-style-type: none"> ○ To reduce the risk that the voter has not checked all possible folders such as SPAM, Election Committee sent out email to the voter directly and notify the voter has additional 24 hours to find and respond to Scrutineer’s email directly. ○ Scrutineer only provided the email address of the voter to the Election Committee, no voting details were sent during the communication. ○ This voter finally confirmed his votes in 24 hours after the reminder sent by the Election Committee.

	<ul style="list-style-type: none"> • One voter submitted the appeal to Election Committee during the dispute period. <ul style="list-style-type: none"> ○ Voter reported no ballot was received. After investigation, there was technical issue on IP blocking. ○ Election Committee confirmed to allow this voter to vote in 24 hours after this technical problem resolved and follow the same confirmation procedure. ○ This voter finally voted and followed the procedure to confirm the votes before the deadline. • As a result, total 85 valid votes were counted from those 23 voters. <p><u>Co-Sponsor Member</u> 7 out of 8 voters participated in this Board Election.</p> <ul style="list-style-type: none"> • One voter did not confirm his vote in 48 hours. <ul style="list-style-type: none"> ○ Election Committee concluded to follow the same procedure of Sponsor Member poll to allow additional 24 hours for confirmation. ○ This voter finally confirmed his votes in 24 hours after the reminder from Election Committee. • As a result, total 7 valid votes were counted from those 7 voters.
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RESULTS

Polling of Sponsor Member and Co-Sponsor Member of DotAsia Board Elections 2023 started from 30th January 2023 00:00 UTC and ended on 13th February 2023 23:59 UTC. There are total 24 and 8 potential voters for polling Sponsor Member and Co-Sponsor Member respectively. Each voter from Sponsor Member group can select up to 4 candidates while Co-Sponsor Member group can select 1 candidate only. 85 votes received from 23 voters in Sponsor Member group and 7 votes received from 7 voters in Co-Sponsor Member group were all counted as valid. The voting details are listed below.

Sponsor Member

	<u>Voter ID</u>	<u>Vote casted</u>	<u>No. of candidates selected</u>	<u>Valid vote</u>	<u>Valid vote counted</u>
1.	715542				
2.	535331	√	4	√	4
3.	284753	√	4	√	4
4.	508079	√	4	√	4
5.	333472	√	3	√	3
6.	677630	√	4	√	4
7.	194942	√	4	√	4
8.	298878	√	4	√	4
9.	409655	√	4	√	4
10.	364205	√	4	√	4
11.	728030	√	4	√	4
12.	914410	√	4	√	4
13.	120741	√	4	√	4
14.	596290	√	4	√	4
15.	363956	√	4	√	4
16.	514157	√	4	√	4
17.	445652	√	4	√	4
18.	626443	√	1	√	1
19.	564685	√	2	√	2
20.	471325	√	3	√	3
21.	361297	√	4	√	4
22.	904329	√	4	√	4
23.	763055	√	4	√	4
24.	667896	√	4	√	4
	Count/Total	23	85	23	85

Continued

To be continued

Co-Sponsor Member

	<u>Voter ID</u>	<u>Vote casted</u>	<u>No. of candidates selected</u>	<u>Valid vote</u>	<u>Valid vote counted</u>
1.	507940				
2.	771886	√	1	√	1
3.	203697	√	1	√	1
4.	756292	√	1	√	1
5.	517759	√	1	√	1
6.	852554	√	1	√	1
7.	658962	√	1	√	1
8.	871757	√	1	√	1
	Count/Total	7	7	7	7

Except for one appeal reported which was finally resolved, no further compliant, disputes and appeals were reported by the end of voting dispute period, 17th February 2023 23:59 UTC. The below results are then be concluded.

Sponsor Member

<u>Candidate Name</u>	<u>Sub-region</u>	<u>No. of votes</u>	<u>Percentage</u>
Jordan CARTER (Elected)	Australasia and Pacific	12	52.17%
Jose Emmanuel DISINI (Elected)	Central and South East Asia	11	47.83%
Maureen HILYARD (Elected)	Australasia and Pacific	11	47.83%
Nicole T.I. CHAN (Elected)	North and East Asia	11	47.83%
Santanu ACHARYA	Central and South East Asia	11	47.83%
Tenanoia SIMONA	Australasia and Pacific	10	43.48%
Thomas BARRETT	Not in Asia Pacific	10	43.48%
Kashif ADEEL	Middle East and Western Asia	9	39.13%
ABSTAIN	N/A	0	0%

The elected candidate with the highest votes is in “Australasia and Pacific” sub-region. The geographic requirement has been met in this case. There were four candidates with the same votes in the second rank to compete for the three vacant seats. According to the Memorandum and Articles of Association of DotAsia Organisation Limited, clause 40(g), “*In case of an equality of votes, the election shall be decided by way of lot*”, random draw by the voting platform was used to elect the rest of the members.

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To be continued

Co-Sponsor Member

<u>Candidate Name</u>	<u>Sub-region</u>	<u>No. of votes</u>	<u>Percentage</u>
Akinori MAEMURA (Elected)	N/A	5	71.43%
Khan Md. Mahfuzus SALAM	N/A	1	14.29%
ABSTAIN	N/A	1	14.29%

ABACUS CPA LIMITED
Certified Public Accountants
Hong Kong, 20 February 2023
Fung Wing Lap
Practising Certificate Number P03644

Review of Matters Raised with Election Committee during and after 2023 Board Election



	Matter Raised	Relevant Information	Election Committee Decision/Response	Procedures under the BGC-004 Board Elections Procedure (Version 1.5) (BEP) and/or Memorandum and Articles of Association (M&A)	Maddocks' Response
1.	<p>Two Candidates [Santanu Acharya (Sponsor Member category)] [Jose Disini (Sponsor Member category)] sought to have their Bio and Candidate information uploaded to the voting platform and election website after the deadline on 24 January 2023.</p>	<p>The email sent to candidates by the Board Secretariat stated "<i>Please provide the above information to boardsec@dot.asia at your earliest convenience but no later than January 24, 2023. <u>Late submission of candidate information will not be posted on the elections page or voting platform after the deadline.</u></i>" (emphasis added)</p> <p>The Board Secretariat sent reminders to both candidates in advance of the deadline.</p> <p>Both requests were made on 30 January 2023, being the date that voting commenced. One candidate cited ill health, the other provided no reason.</p> <p>The Board Secretariat sought the Election Committee's approval for late posting of candidate information given the deadline had past.</p> <p>At the Election Committee Meeting on 31 January 2023, the Election Chair proposed to stand by the original deadline and to not upload the late submitted information on the voting platform and election website. Kuo-Wei Wu and Andrew Molivurae were not present at the Election Committee Meeting. The Election Chair noted that once 2 of the 3 Election Committee members made a decision the email would be sent. Sponsor Category had received 7 votes and Co-Sponsor Category had received 3 votes at this time.</p> <p>Following the Election Committee Meeting on 31 January 2023, the Board Secretariat sought Andrew Molivurae and Kuo-Wei Wu's agreement or disagreement to the position being taken and provided a deadline for this.</p> <p>On 31 January 2023, Election Committee Member, Andrew Molivurae responded by email agreeing to maintain the deadline.</p> <p>The Board Secretary, Murad Ibragimov emailed the Election Committee on 31 January 2023 noting "<i>Yes they missed the deadline. We will inform the Board of their lack of accuracy with timing. On the other hand - the community needs to have a bit of Bio of the candidates. Let's put the information on the web site as we received it during the Election.</i>"</p>	<p>Emails were sent by the Election Chair on 31 January 2023 to the Candidates informing them of the decision. The email stated in part:</p> <p><i>It was also noted that the stated deadlines for material to be submitted was specifically set at a time in advance of the voting period being declared open, to allow for such uploading to be completed before the staff responsible for that action lost their access to edit etc., the platform details (i.e. when the voting platform comes out of test and goes live).</i></p> <p><i>- It was ascertained that you are amongst several candidates, who for whatever reason, had not either made the deadline, or had chosen not to add such information, both by the published deadline and before the voting period began.</i></p> <p><i>- It was further noted that almost 1/3 of the possible electorate had cast their votes in the absence of any material being provided for upload.</i></p> <p><i>- We established that staff made clearly reasonable efforts with all candidates regarding reminders of deadline dates during the month of January.</i></p> <p><i>The Election Committee after all due thought and consideration have resolved unanimously that, with all things considered, they stand by the original deadline of Jan 24, 2023, and any materials received after that date will NOT be uploaded to the voting platform and Election website.</i></p>	<p>Section 2.3 of the BEP provides that:</p> <p><i>- The DotAsia Board will appoint an independent individual to be the Election Chair and 2 other Election Committee members to oversee the election process, declare the election results and resolve disputes. Only elected members of the Board not standing for election in this election (or those who are not Board members) may serve on the Election Committee. (emphasis added)</i></p> <p><i>- The two individuals, one from the Sponsor Members community to be recommended by the Board, the other from the Co-Sponsor Members community to be suggested by the Advisory Council, who have no direct conflict of interest in the elections will be appointed to examine the nomination and voting processes. The individual invited from the Sponsor Members community shall be responsible for examining the processes of the elections for the seat(s) to be returned by the Co-Sponsor members, while the individual invited from the Co-Sponsor Members community shall be responsible for examining the processes of the elections for the seat(s) to be returned by the Sponsor members. (emphasis added)</i></p> <p>Neither the BEP or the M&A provide any details on the procedure or timelines for the provision of candidate information, rather this was contained in the email sent to candidates by the Board Secretariat.</p>	<p>The Election Committee Decision was based on a specified deadline given to all candidates. This was further supported given voting had commenced.</p> <p>The Election Committee is appointed in accordance with the Board Governance Committee's recommendation. The Election Committee is comprised of:</p> <ul style="list-style-type: none"> (a) the Election Chair, Cheryl Langdon-Orr; (b) Election Committee Co-Sponsor Members community representative: to monitor election for seat(s) returned from the Sponsor Member category: Mr. Kuo-Wei Wu (TWIGF); and (c) Election Committee Sponsor Members community representative to monitor election for seat(s) returned from the Co-Sponsor Member category: Mr. Andrew Molivurae (.vu). <p>The late submission related to two Sponsor Members. We note that we could not locate a response from Kuo-Wei Wu indicating his agreement or disagreement to maintaining the deadline provided to candidates.</p> <p>Noting that section 2.3 of BEP provides that the individuals on the Election Committee are appointed to "to examine the nomination and voting processes" and specifically are to "be responsible for examining the processes of the election" related to a certain member type, in the future, we would recommend that the Election Committee obtain confirmation from Election Committee member who is</p>

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					<p>responsible for that category of member, rather than a majority vote.</p> <p>The decision made by the Election Committee was an appropriate one given the information provided to nominees by the Board Secretariat.</p> <p>As a matter of fairness to all other Candidates, we recommend that if an allowance for late provision is afforded to some Candidates, all Candidates should be given the opportunity to put in further information by the extended deadline.</p>
2.	<p>During Voting Period the Scrutineer did not receive voting email confirmation within 48 hours of voting by a voter. The Scrutineer had also sent a reminder to the voter 24 hours after voting which remained unanswered.</p>	<p>In the End of Nominations report sent by the Election Chair to all voters on 27 January 2023, they were asked to whitelist big pulse and the third party scrutineer. They were also informed: "Additionally, the scrutineer will send out a confirmation email to each voter and the voter is required to reply to the scrutineer within 48 hours. <i>Any votes that are not confirmed within 48 hours may be counted as invalid.</i> Please whitelist jesse@abacushkcpa.com." (emphasis added).</p> <p>On 6 February 2023, the Scrutineer wrote to the Election Committee noting in part "<i>The deadline of replying the confirmation email was 4 Feb 2023 07:00 (UTC). According to the procedure, the votes will be treated as invalid. Please confirm and I will update BigPulse and inform the voter the votes will be voided accordingly.</i>"</p> <p>The 48 hour voter confirmation period was contained in various communications with Members including the Voting webinar.</p>	<p>At the Election Committee Meeting on 7 February 2023, the Election Committee resolved that to reduce the risk that the voter had not checked all email folders (SPAM) etc for the Scrutineer's email, the Election Committee would email the voter directly providing a further 24 hours for the validation following which the vote would be invalidated.</p> <p>The Election Committee was provided the email address of the voter by the Scrutineer but never saw any voting details. The Election Committee wrote to the Candidate advising them to locate the email from the Scrutineer and that they had a further 48 hours to vote. The email noted in part "<i>According to the stated procedure, the vote should be treated as invalid after 48 hrs with no response. However the Elections Committee is aware that occasionally emails can go to SPAM or even be overlooked, so we are allowing this additional opportunity to respond, before we do indeed instruct the scrutineer to invalidate the vote.</i>"</p> <p>This same procedure was adopted two further times during the Election.</p>	<p>Section 2.3 of the BEP provides that the third-party scrutineer will perform the following procedures:</p> <p>...</p> <p><i>3. Obtain email confirmation from voters and compare the individual details of votes cast included in the summary to the email confirmation received</i></p> <p>The BEP does not provide a timeline for confirmation of the vote to the scrutineer.</p>	<p>Section 2.3 of the BEP did not provide a time period for the Scrutineer to obtain email confirmation. Rather this was included in communications with Members which noted that unconfirmed votes <i>may</i> be counted as invalid (emphasis added).</p> <p>We consider that the decision made by the Election Committee was not inconsistent with the BEP.</p>
3.	<p>A then Board Member and Candidate [Kashif Adeel] questioned the secondment of a Candidate [Khan Md.Mahfuzus Salam] by a representative of APRALO as they had "<i>already resigned as vice chair and not part of APRALO team.</i>" and that</p>	<p>The Election Committee held off on sending the Nominations Report until the matter was considered by them.</p> <p>During the ad hoc Election Committee Meeting on 26 January 2023, the Election Chair noted she had records indicating that the representative had resigned from the role of Vice-Chair on 22 April 2021, however this was not a requirement for being a representative of an organisation.</p>	<p>On 26 January 2023, the Election Committee responded, in part as follows:</p> <p><i>As a result of these discussions we have found that:-</i></p> <p><i>1. The named representative of the secondment body, resigned from the APRALO Leadership Team as one of its Vice Chairs on 22 April 2022 (we have file copy of the resignation email) and confirm that as per the links provided to the APRALO</i></p>	<p>Section 2.1 of the BEP, Nomination, provides that:</p> <p><i>In order to be eligible to propose or to second a nomination for a candidate, a Member must be listed on the DotAsia website, at: http://www.dot.asia/dotasia-organisation/communitygovernance/ on or before the opening of the nomination period.</i></p> <p>Further, section 2.1 of the BEP, sets out the process of the Board Secretariat confirming the email address</p>	<p>We note that confirmation of the voting representative was sought before the BEP had been approved, however the current BEP remained largely the same as the previous BEP.</p> <p>We consider that the Board Secretariat and the Election Committee followed the BEP in</p>

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	<p><i>"Considering the above, the secondment should not be counted and the candidate should be disqualified for further steps."</i></p>	<p>Further, the Board Secretariat of DotAsia produced emails to the Election Committee showing that she had contacted APRALO on both 16 and 28 November 2022 seeking confirmation of the representative's email address for the DotAsia 2023 Board Elections. The emails were copied to two further individuals Professor Dr Hong Xue and Holly Raiche.</p> <p>The Board Secretariat received a response from Professor Dr Hong Xue on 29 November 2022, noting she did not know why Lianna had not responded yet.</p> <p>On 6 December 2022, the Board Secretariat received confirmation from Lianna Galstyan that she would be the voting representative for APRALO, using email address lianna@magic.am.</p> <p>The Election Committee unanimously agreed that there was sufficient evidence that the individual was the voting representative.</p>	<p><i>Website she is no longer part of the Leadership Team (AP-LT)</i></p> <p><i>2. We have further confirmed that the Bylaws, (Rules of Procedure) and Standard Operating Practices (SOPs) of APRALO do not require Representational Roles (or Liaison functions) to be serving Members of the AP-LT and in fact the preferred practice for APRALO (as with the ICANN ALAC) is for such roles to where possible be undertaken by individuals who are not currently also burdened with the additional responsibilities and expectations of being part of the Leadership Team.</i></p> <p><i>3. Further we reviewed copy of the required (under the current BEP) documentation regarding annual confirmation from Dot.Asia Member entities with regards to who is their current Voting Representative, and we have sighted now not only the minimally (under the BEP) email confirming the named Representative of APRALO for the 2023 election cycle to be Lianna Galstyan, and also in addition sighted emails supporting her continuation in this role from other parts of the wider APRALO Community.</i></p> <p><i>4. As there is no requirement under the BEP for Representatives of Member entities to be advertised or published in any particular way, nor of course to hold any specific Rank or Role in any Member entity, nor do we, under normal circumstances, require a written letter of endorsement from Member entity Boards or Management of any Representative or indeed positive action to confirm continuation in a role.</i></p> <p><i>We have found that in our opinion there is sufficient evidence and note particularly, that it is absolutely equivalent to the evidence from other Member entities regarding their annual confirmation of their Representation, that there is no fair bases for us to reject the validity of the APRALO secondment and that the Candidate Nominated by APNIC and Secondment by APRALO justified as being in full compliance with the BEP under which these elections are being conducted.</i></p>	<p>that the Member will use to make nominations, seconds, and to cast votes. Relevantly, it provides that the Board Secretariat will send a notice to all members indicating the operational email address on the Board Secretariat's record and that Members may notify the Board Secretariat to confirm or update the email address from which a Member would be using to make nominations, seconds, and to cast votes. It further provides that a member is not required to respond if there is no change to the email address, and in such case, the Board Secretariat will continue to utilize the email address on record until further instructions and confirmation from a member.</p> <p>Finally, if a submission is received from an email address other than the email address on record for a Member, DotAsia will email all representatives of the Member that are on its members mailing list, and such submission will be considered valid if confirmation is received from the voting representative or no objection is received from any representatives of the Member by the end of the nomination period.</p>	<p>confirming the voting representative.</p> <p>We note that then Board Member and Candidate [Kashif Adeel] sought copies of the request, confirmation emails and the evidence received. This was not provided and does not appear to have been pressed. The Election Committee was not required to provide this documentation under the BEP.</p> <p>The actions of the Secretariat and Election Committee were appropriate.</p>
4.	<p>Candidate [Kashif Adeel] requested details of specific votes cast for him as he did not feel the results were fair and transparent.</p>		<p>On 23 February 2023, the Election Committee responded as follows:</p> <p><i>The Election Committee will not release any details on specifics of any votes cast for any candidate; Please also refer to the details of the Transparency Agreement outlined below.</i></p>	<p>Section 2.3 of the BEP provides that "the Election Committee and the third-party scrutineer will have access to the voting ballots to perform their monitoring and agreed procedures".</p> <p>Additionally, voters are informed of this and are required to accept the Transparency Agreement at the time of voting as follows:</p>	<p>There is nothing in the BEP or the M&A that requires the Election Committee to release any details on specifics of any votes cast for any candidate. Further, releasing results to candidates would be outside of the parameters of the</p>

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				<p>"Please note that this poll is not anonymous. This means the poll administrators (Third Party Scrutineer, Election Compliance Administrator and Election Committee) have access to the full details of your voting records for vote validation purposes."</p>	<p>Transparency Agreement accepted by voters.</p> <p>The Election Committee acted appropriately by not providing the requested information.</p>
5.	<p>Candidate [Santanu Acharya] requested to know if .BT, .AM, .MO and .AF had voted as he felt there were discrepancies.</p>	<p>There are 25 Sponsor Members listed on the DotAsia website. The Scrutineer's report dated 20 February 2023 (Scrutineer's Report) stated that "23 out of 24 voters participated from the Sponsor Member category".</p> <p>The Scrutineer confirmed that there are no voting records for .AF in an email dated 25 February 2023.</p>	<p>On 23 February 2023, the Election Committee responded as follows:</p> <p><i>During voting, the voters accepted a Transparency Agreement which informed them of the following: "Please note this poll is not anonymous. This means the poll administrator (Third Party Scrutineer, Election Compliance Administrator and Election Committee) have access to the full details of your voting records for vote validation purposes" .</i></p> <p><i>The Election Committee will not release any specific or non anonymized information about the voters, but attention is drawn to the details of the number of possible individual voters and votes cast detailed in the scrutineers report.</i></p>	<p>As above.</p>	<p>There is nothing in the BEP or the M&A that requires the Election Committee to release any details on specifics of any votes cast for any candidate. Further, releasing results to candidates would be outside of the parameters of the Transparency Agreement accepted by voters.</p> <p>The Election Compliance Administrator and Election Committee are however, permitted to access to full details of voting records for vote validation purposes should they need to validate each of the voters.</p> <p>The Election committee acted appropriately by not providing the requested information.</p>
6.	<p>Candidate [Kashif Adeel] requested an explanation of why the Middle East is not considered under the regional diversity.</p>	<p>The Notice of Board Elections 2023 listed Alireza SALEH as remaining on the Board from the 2022 Board Election representing the sub-region Middle East & Western Asia.</p> <p>The Notice of Board Election further noted that upon the expiration of the current term for the Directors expiring 26 February 2023, there will be no remaining Director coming from the Sub-Region Australasia & Pacific and that in accordance with the geographical diversity requirement specified in Article 33 of the M&A, there shall be at least 1 Director elected for Australasia & Pacific.</p>	<p>On 23 February 2023, the Election Committee responded as follows:</p> <p><i>Referring to the geographical diversity requirement specified in Article 33 of the M&A. The current Board's geographical makeup is listed on the Election website. As outlined in multiple correspondences between the secretariat and Members and the Election Committee and Members the only geographic diversity consideration in this election cycle as quoted:-</i></p> <p><i>" ... at least 1 Director elected for the sub-region of Australasia and Pacific, and the 3 candidates from that sub-region are: Tenanoia SIMONA Maureen HILYARD Jordan CARTER After voting, the one who receives the highest number of votes for the sub-region of Australasia and Pacific will be deemed elected and the rest of the 3 vacancies will be filled by the top 3 candidates from the remaining 7 candidates."</i></p>	<p>Article 33 of the M&A provides that Among the eight (8) Directors elected by the Sponsor Members, three shall be at least (1) Director from each of the four (4) areas within the Pan-Asia and Asia pacific region, namely, North and Northeast Asia, South and Southeast Asia, Middle East, Asia Minor and Eurasia and, Australasia and Pacific.</p> <p>Further, Section 2.6 of the BEP, Geographical Diversity Requirement, directs members to Appendix B of the BEP for a more detailed description of the 4 areas within the Pan-Asia and Asia pacific region and the corresponding economies and countries.</p>	<p>Article 33 of the M&A did not apply for the Middle East for this Election as there was a remaining Director on the Board from Middle East & Western Asia.</p> <p>The election of a Director from Australasia & Pacific was complied with, as required by Article 33 of the M&A.</p> <p>The Election Committee's response was appropriate.</p>

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7.	<p>Chair of the Board Finance Committee/Candidate requested Scrutineer engagement details due to concerns stated in the "Practitioner's Responsibilities" section of the Scrutineer Report. [Santanu Acharya] [Kashif Adeel]</p>	<p>On 24 February 2023, the Scrutineer provided the Chair of the Board Finance Committee/Candidate a copy of their engagement letter. The engagement letter confirmed that they were engaged to perform an agreed-upon procedures engagement in accordance with the Hong Kong Standard on Related Services (HKSRs) 4400 (Revised), Agreed-Upon Procedures Engagements.</p> <p>A letter of representation dated 20 February 2023, addressed to the Scrutineer and signed by "Director" on behalf of DotAsia of DotAsia stated:</p> <p><i>We confirm to the best of our knowledge and belief, and having made appropriate inquiries of other directors and officials of the company, the following representations given to you in connection with your agreed-upon procedures on Board Elections in 2023.</i></p> <p><i>Responsibilities of Directors</i></p> <p><i>We have acknowledged that the agreed-upon procedures are appropriate for the purpose of the engagement and are responsible for the subject matter on which the agreed-upon procedures are performed.</i></p> <p><i>We also provide you all relevant information and access, as applicable, as agreed upon in the terms of the engagement.</i></p> <p><i>We are also responsible for taking reasonable steps for the prevention and detection of fraud and other irregularities.</i></p> <p>It is not clear who signed the letter of representation on behalf of DotAsia.</p>	<p>On 23 February 2023, the Election Committee responded as follows:</p> <p><i>Scrutineer replied that they performed their scope in the agreed-upon procedures in the engagement and it is not an assurance engagement. Scrutineers do not express an opinion or an assurance conclusion. The Election Committee holds its meetings with both the Election Compliance Administrator and the Third Party Scrutineer in the regular presence of one of the Members of the Board; so we have checked and Jesse the appointed Third Party Scrutineer and her Company will manage all interactions and correspondence regarding matters relating to them separately.</i></p>	<p>Section 2.3 of the BEP provides that the "If the elections proceed into voting, DotAsia will also appoint a third party scrutineer to perform an agreed-upon procedures on the voting results."</p> <p>Section 2.3 of the BEP further provides that "The third-party scrutineer's work will be carried out in accordance with the early adoption of Hong Kong Standard on Related Services (HKSRs) 4400 (Revised) "Engagements to Perform Agreed-upon Procedures" issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA")."</p>	<p>Section 2.3 of the BEP was followed and the Scrutineer was engaged to perform an agreed-upon procedures engagement in accordance with the Hong Kong Standard on Related Services (HKSRs) 4400 (Revised), Agreed-Upon Procedures Engagements.</p> <p>Further, the Board of DotAsia acknowledged that the agreed-upon procedures were appropriate for the purpose of the engagement and that they were responsible for the subject matter on which the agreed-upon procedures were performed.</p>
8.	<p>Chair of the Board Finance Committee requested details on the voter email validation process. [Kashif Adeel]</p>	<p>The Scrutineers set out the process that the Scrutineer undertook to obtain a confirmation of the vote.</p>	<p>On 23 February 2023, the Election Committee provided details of the voter email validation process as follows:</p> <p><i>Voter email validation:</i></p> <ol style="list-style-type: none"> <i>1) Prior to the voting period, the Board Secretariat uploads the voter email list to BigPulse. Board Secretariat double-checks the voting emails in the voting system against the DotAsia voter spreadsheet record.</i> <i>2) When the voting period begins, the Election Compliance Admin checks the voting system emails again against the voter spreadsheet and ensures that all ballots were issued and nothing is in the "bounced email" notification.</i> <i>3) Once a voter votes, the Scrutineer is copied on the vote receipt. The Scrutineer emails the voter separately to obtain a positive confirmation that the voter voted for the same</i> 	<p>As noted above, section 2.1 of the BEP sets out the process of the Board Secretariat confirming the email address that the Member will use to make nominations, seconds, and to cast votes.</p> <p>Further, as noted above, section 2.3 of the BEP sets out that the Scrutineer will obtain email confirmation from voters and compare the individual details of votes cast included in the summary to the email confirmation received.</p>	<p>The voter validation process set out in the email from Election Committee dated 23 February 2023, provides additional steps to the BEP to validate votes.</p> <p>We note that the bounced email notifications in the "Download Bounced Email" section of the BipPulse platform, did not appear to be set up for this Election, however it was not required under the BEP. We consider that it is prudent to include this in the future to ensure that any issues with bounced emails are identified at the earliest opportunity.</p>

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			<p><i>candidates as indicated in the voting system vote receipt.</i></p>		<p>Further, the BEP does not provide any guidance as to the role or responsibilities of the Election Compliance Administrator. We consider that it is prudent to include this in the BEP.</p>
9.	<p>Board member requested clarification on handling of CNNIC ballot, possible duplication of votes and concerns about voting after preliminary results were issued during the voting dispute period. [Leonid Todorov] [Santanu Acharya] [Murad Ibragimov]</p>	<p>An email to the Election Committee from the Elections Compliance Administrator on 15 February 2023 provides the timeline for the CNNIC issue. Relevantly it notes:</p> <ul style="list-style-type: none"> - February 13, 2023, 2:30 PM - received an email from CNNIC about the missing ballot. - February 13, 2023, 4:00 PM - re-sent the ballot to CNNIC and inform of the guidelines. - February 14, 2023, 7:50 AM - CNNIC requested to resent the ballot again. - February 14, 2023, 7:53 AM - re-sent the ballot again to CNNIC seven (7) minutes before the voting period's end. - February 14, 2023, 4:23 PM CNNIC emailed again after the voting period ended that they haven't received the ballot even after checking all the provided guidelines. - February 14, 2023, 11:00 PM - support request was sent to BigPulse for investigation. - February 15, 2023, 9:00 AM - BigPulse provides their response about Blocked IP (@cnnic.cn) on their email servers because it belongs to China. - February 15, 2023, 10:36 AM – The Board Secretary informed CNNIC of the issue and notified them about the Voting Dispute Period and to contact the Election Committee <p>On 15 February 2023, CNNIC wrote to the Election Committee forwarding emails showing that the ballot had not been received and asking if they had a chance to vote still.</p> <p>During a 16 February 2023 ad hoc Election Committee Meeting, the Election Committee agreed to provide CNNIC a further 24 hours to cast their vote given the IP blocking issues.</p> <p>On 16 February 2023, the Election Chair wrote to CNNIC informing them of the Election Committee's decision.</p> <p>On 16 February 2023, it was discovered that CNNIC was blocking the BigPulse voting platform. The Board Secretariat wrote to CNNIC providing details of BigPulse's IPS and domain to unblock them. Further, the Board Secretariat informed CNNIC that the</p>	<p>On 23 February 2023, the Election Committee responded as follows:</p> <p><i>This process issue was raised by the voter to the Elections Committee in the specified manner; the issue (within the Bigpulse system) was also identified and fixed and the vote then cast during the 96 hrs voting dispute period. We have provided greater detail in an earlier reply email sent Tue, Feb 21, 9:26 AM.</i></p> <p>The email of 21 February 2023 stated as follows:</p> <p><i>To the best of my knowledge (and backed by a recent note from a CNNIC executive), it may well happen that CNNIC submitted 2 ballots completed by 2 different staff members.</i></p> <p><i>My questions are:</i></p> <p><i>1) have you addressed the matter and verified the ballots with the scrutineer?(sic)</i> YES</p> <p><i>2) if you have, which ballot was accepted/rejected and based on which criteria?</i></p> <p><i>The only ballot received to the BigPulse platform was accepted :- this vote was cast within the additional short time frame allowed by the Committee for the Member entity to do so. This rare exception was made to exercise all due fairness and consideration to your Member, once an IP Address blocking issue identified in the voting platform around the close of the advertised voting period**. The issue on the BigPulse Voting Platform issue was promptly rectified (leaving only any matters still in effect on the Members end to be considered) the short time frame allowed was one that we felt allowed the minimum possible required for any fix on the Members end to be actioned and promulgated, whilst not exceeding in any way the 96 dispute periods timeline, actually allowing more than half of that dispute period time to still be in effect.</i></p>	<p>Article 40(f) of the M&A provides that each Member of a category is entitled to a number of votes which is equal to the number of vacancies to the Board for the relevant category.</p> <p>Section 2.4 of the BEP, Dispute Resolution, provides that:</p> <p><i>Any complaint, disputes and appeals regarding the conduct of the election must be lodged in writing with the Election Chair (electioncommittee@board.dot.asia). Such notices of dispute or appeals must be lodged no later than 96 hours after the closing of the Voting Period or the Nomination Period if no voting is required. The dispute resolution process is intended for complaints and appeals against the process and not the results of the election.</i></p> <p><i>Members may lodge notices of dispute and appeals through their voting representatives. Candidates may lodge a notice of dispute directly with the Election Chair. No other party is entitled to lodge a notice of dispute.</i></p> <p><i>The Election Chair, in consultation with the Election Committee, will resolve the dispute at his or her discretion. The Election Chair will provide notice of all lodged disputes and the Election Chair's decision before announcing the election results.</i></p>	<p>We note there was no individual identified as a voting representative on the ballot.</p> <p>Section 2.2 of the BEP requires the voting credentials be emailed to the "voting representatives". It is not clear whether this is an individual or the email address referred to at section 2.1 of the BEP. We consider that it is prudent that the BEP is clarified to identify an individual voting representative be specified for a Member. In accordance with section 2.4 of the BEP, the Election Committee received an appeal with the 96 hour dispute resolution period.</p> <p>The Election Committee agreed to provide an addition 24 hours for the Sponsor Member to cast their vote due to the IP blocking issues that caused the voting member not to receive a ballot.</p> <p>In accordance with Article 40(f) of the M&A, CNNIC was entitled to 4 votes as there were 4 vacancies in the Sponsor Member category. CNNIC cast 3 out of the 4 votes they were eligible to cast. There is no evidence of duplicate voting by CNNIC.</p> <p>We deal with the release of the Preliminary Results further below.</p> <p>In circumstances where CNNIC was entitled to vote, but unable to do so by reason of technical issues, it was appropriate for them to be granted additional</p>

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		<p>Election Committee had allowed for voting to be open until 0400 UTC on 17 February 2023, which was 4 hours after the voting dispute period. The email further noted that CNNIC would need to reply to the Scrutineer's email within 48 hours of their email in order for the vote to be fully recorded.</p> <p>CNNIC confirmed receipt of the ballot and that they had finished voting on 16 February 2023 and on 17 February 2023 the Scrutineer confirmed that the vote confirmation had also been received.</p> <p>On 25 February 2023, the Scrutineer provided a full list of the voting Members, but not the voting results. Each of the voting Members identified are listed in the spreadsheet. The Scrutineer confirmed that each of the votes were verified and confirmed. The voting list has CNNIC listed as one of 23 Sponsor Members voters. CNNIC was only listed once and completed 3 votes.</p>	<p><i>The rationale for our decision was in this most unusual circumstance the Member had been making reasonable efforts to solve an issue in more than reasonable ways, and it was only on deeper analysis of the issue undertaken by BigPulse in response to this matter raised with them, that the issue was identified in their security system, that was affecting the ballot exchange between platform and this one voter. This issue was identified with unfortunate timing (peri-close of voting time) but clearly explained why the repeated efforts of the Voting Member entity and your secretariate and the scrutineer {who was able to request our BigPulse voting platform client support to reissue ballots several times} to assist, had still failed. Therefore to allow the Member a narrow band of time once the platform fix was confirmed, to action their ballot that they were unable to on several occasions earlier in the voting period was in our unanimous view more than reasonable we did note in this decision that the additional vote when cast if confirmed may or may not change the preliminary results that the Election Committee received at the beginning of the 96 hr dispute period; I wrote to the Member on behalf of the committee informing them of our decision, the scrutineer arranged for a new ballot to be sent by BigPulse, the cast vote was almost immediately received and then equally promptly (well within the required timeline) confirmed between the scrutineer and the voter. The shared with the Board Final Election Results reflect its inclusion. (sic)</i></p> <p><i>** Note The Election Committee was also made aware by BigPulse of a corresponding IP Address blocking issues on the voter end and in our correspondence with them we noted that such issues was their responsibility to fix within the additional short timeframe provided by us, if their vote was to be received for inclusion, and of course that this vote would still require the confirmation/ratification process that is conducted by the scrutineer.</i></p>		<p>time to cast their vote. It would be desirable for the BEP to expressly state that this option is available if the member is unable to vote in a similar circumstance.</p> <p>We note that the bounced email notifications in the "Download Bounced Email" section of the BipPulse platform, did not appear to be set up for this Election, however it was not required under the BEP. This may have identified the CNNIC voting issue earlier. We consider that it is prudent to include this in the future to ensure that any issues with bounced emails are identified at the earliest opportunity.</p>
10.	<p>Board member requested clarification on why 24 ballots were issued for 25 Sponsor members. [Leonid Todorov]</p>	<p>There were 25 Sponsor Members listed on the DotAsia website.</p> <p>The Scrutineer's Report stated that "23 out of 24 voters participated from the Sponsor Member".</p> <p>The DotAsia Board Meeting Minutes of 25 and 27 December 2022 noted as follows: <i>An issue was raised regarding the voting eligibility for .TJ where there appears to be internal conflicts based on the correspondences</i></p>	<p>On 21 February 2023, the Election Committee responded as follows:</p> <p>As well, I noticed that 24 ballots were sent out, while the DotAsia community map displayed 25 members. May I know which Member was not given a ballot?</p> <p><i>All of the electorate who confirmed their contact details as per the requirements in the pre election phase were included in the ballot if 1 Member did</i></p>	<p>As noted above, section 2.1 of the BEP, sets out the process of the Board Secretariat confirming the email address that the Member will use to make nominations, seconds, and to cast votes.</p> <p>Section 2.1 further provides that: <i>If a member is considered unreachable, for example when the outreach email from the Board Secretariat is undeliverable to all the</i></p>	<p>Section 2.1 of the BEP was followed and the inability to confirm a representative was reported to the DotAsia Board via the Board Secretary.</p> <p>It is not clear whether the Election Committee feedback about .TJ was shared with the Board by the Board Secretary. The Election Committee does</p>

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		<p><i>received in the past, and that there is difficulty in reaching them. A recommendation was made not to try to further engage with .TJ and to accept the update that the past representative had left the organization 11 years ago. It was suggested and agreed on to defer the decision on the matter to the Election Committee. (2022.12.A04)</i></p> <p>On 27 December 2022, the Board Secretariat wrote to the Election Committee, copied to the Board Secretary, seeking advice in relation to validating the voting representative and sending voting ballots for .TJ. The Board Secretariat noted amongst other things that:</p> <ul style="list-style-type: none"> - The current voting representative .TJ on record is responded to the last election that he continues to be the voting representative. - A Board member had notified the Board Secretariat that the voting representative was not a valid contact for .TJ. <ul style="list-style-type: none"> - The DotAsia Board Chair also attempted to reach out to the current person in charge of .TJ, however, they had not been responsive. - Over the past months, the Board Secretariat had requested help from the DotAsia Board and ICANN to assist in finding the right contact for .TJ. <p>In a further email to the Election Committee of 27 December 2023, the Board Secretariat noted:</p> <ul style="list-style-type: none"> - they had been following up a different contact at .TJ since Jan/Feb 2022 with no response; - no emails were issued to the individual claiming to be voting representative as he had voted in the previous election, and they had since been informed he had left the organisation many years ago. <p>On 27 December 2022, the Election Committee agreed in writing that, copied to the Board Secretary and Board Secretariat:</p> <ul style="list-style-type: none"> - Firstly, they are satisfied that all reasonable efforts have been made to reach out and confirm the authorised voter for the Member, (if the efforts should continue, or not, is up to the dot.Asia Board); and - Second, that regardless of contact or activity related to this upcoming election, by any one purporting to be authorised by the Member, no action or acceptance of input including request to vote, can be considered valid, unless accompanied by a 'Letter of Authority 'from the .TJs' Board outlining their resolution to appoint such a voting representative. 	<p><i>not confirm then perhaps the secretariat who managed that confirmation process may be in a position to answer your inquiry, but the Committee did resolve that in the instance where there was a dispute, doubt or question between current representation of the Member and anyone no longer associated with the Member claiming to maintain any representation status, that a Letter of Authority from the Members Board of Senior Management should be required to validate any such claims, perhaps that also affected the 24 vs 25 discrepancy.</i></p>	<p><i>contacts listed for the member, then efforts should be made to identify reachable contacts for that member, and cases reported to the Board if still no contacts are available after such efforts.</i></p>	<p>not appear to have received any further direction from the DotAsia Board prior to the Election.</p> <p>We consider that the decision made by the Election Committee was appropriate.</p> <p>To ensure consistency, it may be desirable for the BEP to require a letter from the Member's Board to confirm the voting representative. [if practical]</p>



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		<p>On 29 December 2022, the Board Secretariat notified the Election Committee that she would work with the Board Secretary to notify the DotAsia Board that no votes would be accepted from .TJ unless there was a 'Letter of Authority' from the .TJ Board confirming its voting representative.</p> <p>The Board Secretariat wrote to the Board Secretary about him informing the DotAsia Board on 28 December 2023, 3 January 2023 and 11 January 2023. The 11 January 2023 email stated "Unless I have further directions from you, I trust that you will share the Election Committee feedback about .TJ with the Board."</p> <p>On 25 February 2023, the Scrutineer provided a full list of the voting Members to the Election Committee, but not the voting results. Each of the voting Members identified are listed in the spreadsheet. The Scrutineer confirmed that each of the votes were verified and confirmed. The voting list does not include .TJ.</p>			
11.	Candidate challenged the voting system random draw method as it was done without the presence of candidates. [Santanu Acharya]		<p>On 23 February 2023, the Election Committee responded as follows:</p> <p><i>As previously explained the voting system random draw method utilised, when several candidates in a membership category received an equal number of votes, after the geographic requirements were met in a 'First Past the Post' system fully complies with section 1.3 (g) of your Board Election Procedures. However we further note:-</i></p> <p><i>There is *no* requirement for this 'drawing of lots' to be done in the presence of anyone from DotAsia membership, and Bigpulse has confirmed that they performed manual random selection on the tied candidates to fill the final three vacancies of the four remaining after the candidates receiving the highest and second highest number of votes (which also satisfied the geographic diversity requirement listed above) were selected.</i></p> <p><i>For your information and note they also offered to quote for the required additional filters etc., to be established for future use of their online voting platform as a fully automated one including the application of random draw tie-breaking. Further information about the security and standards utilised in the BigPulse system.</i></p> <p><i>- See</i> <i>https://www.bigpulsevoting.com/about/security/</i></p>	<p>Article 40 (g) of the M&A provides that:</p> <p><i>The candidate receiving the greatest number of votes in his favour within his category will be declared to be elected to the Board for such category. In case of an equality of votes, the election shall be decided by way of lot.</i></p>	<p>In accordance with the M&A and the BEP, there was no requirement to have the Candidates present during the drawing of the lot.</p> <p>We consider that the decision made by the Election Committee was appropriate.</p>

Review of Matters Raised with Election Committee during and after 2023 Board Election



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12.	<p>Candidate [Santanu Acharya] noted that the Scrutineer did not observe the BigPulse voting system and was not present during the random draw.</p>	<p>The Scrutineer's Report noted that between 10 to 12 January 2023 two trials had been undertaken on testing the procedures and results on BigPulse, with focus on first-past-the-post voting with geographic requirement and tie-breaker/draw winner for last tied vacant seat. The Scrutineer's Report confirmed that both of these requirements were tested by different scenarios and results were valid for meeting both requirements.</p> <p>On 14 February 2023, the Election Compliance Administrator sought confirmation that the Random Draw was between the 4 people that were tied, to ensure that people were not removed due to the Geographic requirement limitation. A representative from the voting platform confirmed that it was a random selection.</p> <p>On 25 February 2023, the Scrutineer provided a full list of the voting Members, but not the voting results. Each of the voting Members identified are listed in the spreadsheet. The Scrutineer confirmed that each of the votes were verified and confirmed.</p>		<p>Section 2.3 of the BEP provides that:</p> <p><i>The third-party scrutineer will perform the following procedures:</i></p> <ol style="list-style-type: none"> <i>1. Report on the third-party online voting platform by reviewing the third-party online voting platform.</i> <i>2. Obtain the results of the votes cast for the Board election, included in the poll results from the third-party voting platform, and will check the additions of the voting totals included in the summary.</i> <i>3. Obtain email confirmation from voters and compare the individual details of votes cast included in the summary to the email confirmation received.</i> <p>Article 40 (g) of the M&A provides that:</p> <p><i>The candidate receiving the greatest number of votes in his favour within his category will be declared to be elected to the Board for such category. In case of an equality of votes, the election shall be decided by way of lot.</i></p>	<p>In accordance with the M&A, the BEP and the agreed upon procedures with the Scrutineer, there was no requirement to have the Scrutineer observe the BigPulse voting or be present during the drawing of the lot.</p> <p>The Scrutineer was copied into the voting receipts sent by BigPulse, confirmed the votes with each of the voters and checked the tallying up of each of the voting totals in accordance with section 2.3 of the BEP.</p> <p>The appropriate process was followed.</p>
13.	<p>Sponsor Member [.AM] wrote to the Chair of the DotAsia Board after the dispute notice period, in early March 2023, asserting that they had not authorised a vote and noting that the Sponsor Member [.AM] had shared with the DotAsia CEO their membership termination notice well before the election (on 7 January 2023)</p>	<p>On 26 February 2023, after voting had concluded, the Election Committee received an email from the CEO of the DotAsia Board, Edmon Chung, forwarding an email from the Board Chair of ISOC AM dated 8 January 2023 to Edmon Chung the CEO of DotAsia, copied to Leonid Todorov, the then Chair of DotAsia. The email stated in part "We appreciate your cooperation but believe we are no longer in a position to continue our Membership in DotAsia, so please consider it terminated as of the date of dispatch of this note." We understand that this was not received by the CEO of DotAsia.</p> <p>The email also provided a WhatsApp Chat Excerpt between the CEO of DotAsia, Edmon Chung, and the voting representative of .AM [Lianna Galstya] on 30 January 2023 regarding support by .AM in the Election. In the chat the voting representative of .AM [Lianna Galstya] noted that she was "not sure for .am support. In fact, it seems that the registry submitted a letter of stepping down the membership" to which the CEO responded "see, but I dont think we have received it yet." "this vote will still count and important." "it will define the future of DotAsia and the team." The voting representative of .AM [Lianna Galstya] further stated that it put her in "a weird situation. I think they don't want to be part of this process.." and that "if I vote, they can later announce it void or have a reason for manipulation of the situation.. not sure what's best".</p> <p>On 3 March 2023, the Chair, Leonid Todorov sent an email to the Election Committee noting that .AM was</p>		<p>Section 2.1 of the BEP, sets out the process of the Board Secretariat confirming the email address that the Member will use to make nominations, seconds, and to cast votes. This includes that at the opening of the Voting Period, the voting credentials will be emailed to the voting representative of each eligible Member.</p> <p>Section 2.3 of the BEP provides the Scrutineer will obtain email confirmation from voters and compare the individual details of votes cast included in the summary to the email confirmation received.</p> <p>The BEP also provides at section 2.2 that:</p> <p>In the case where voting is necessary, in order to be eligible to cast a ballot for the Board Elections, a Member must be listed on the DotAsia website, at: http://www.dot.asia/dotasia-organisation/community-governance/ on or before the opening of the Voting Period, as specified in Section 3 below.</p> <p>A Member is defined in the M&A as "an organisation admitted to membership of the Company by the board and whose name appears on the Register of Members for the time being."</p> <p>Register is defined to mean the Register of Members of the Company to be kept Pursuant to Section 95 of the Ordinance.</p>	<p>We have not been provided with the email address confirmation of the .AM voting representative in accordance with Section 2.1 of the BEP. However, we understand that the Board Secretariat had received confirmation in November 2022 that the voting representative would remain the same. We have not seen this communication.</p> <p>We have not seen anything to suggest that the Election Committee or the Board Secretariat was provided with details of the termination .AM's membership prior to the Election. Further, .AM was listed on the DotAsia website at the opening of the Voting Period (and was still listed as at 22 May 2023) in accordance with section 2.2 of the BEP. As such, both the Election Chair and Board Secretariat acted appropriately with the knowledge that they had.</p> <p>However, under Article 9 of the M&A, .AM's email of 8 January</p>



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		<p>conducting an internal investigation into the matter. The CEO further noted in his email that the .AM voting representative had admitted to casting a vote for the .AM as she had confused it with a ballot she received as a Co-Sponsor Member for APRALO. Further the email noted that the voting representative did vote on behalf of the Sponsor Member, .AM and confirmed the vote within 48 hours of receiving a request for confirmation by the Scrutineer.</p> <p>The vote receipt from BigPulse of 3 February 2023 and the email from the Scrutineer to lianna.isoc@gmail.com stated that the vote was for the Sponsor Member category and listed the candidates voted for.</p> <p>On 25 February 2023, the Scrutineer provided a full list of the voting Members, but not the voting results. Each of the voting Members identified are listed in the spreadsheet. The Scrutineer confirmed that each of the votes were verified and confirmed. The list attached to the Scrutineer's email has Lianna Galstya listed as being voting representative for APRALO in the Co-Sponsor category with email address lianna@magic.am and as voting representative for Sponsor Member category for ISOC Armenia, using email address lianna.isoc@gmail.com.</p> <p>APRALO was one of 7 members who voted in the Co-Sponsor category. We note one Co-Sponsor Member voter abstained from voting. We do not have details about which Co-Sponsor Member voter abstained.</p>		<p>Membership seems to be directed to membership of the organisation rather than the holding of shares in a corporate entity.</p> <p>The Website includes the following statement:</p> <p>Sponsor Members shall be organisations in the Pan-Asia and Asia-Pacific region, as defined by ICANN's Asia / Australia / Pacific Region (based on the ICANN Region definitions) that manage and operate any of the country code Top Level Domain (ccTLD) registries in the region.</p> <p>It also provides a link to a DotAsia Membership Briefing and Application form. This deals with admission to membership.</p> <p>Article 9 of the M&A provides that "A Member may terminate its membership at any time upon prior written notice to the Board..."</p>	<p>terminated its membership as at that date. As such, it was not entitled to vote in the election. This is a matter that should have been brought to the attention of the Board Secretariat.</p> <p>As the BEP does not set out a process or deemed outcome where there is an irregularity, the election results may be open to challenge by a Candidate affected by the .AM vote.</p> <p>It would be prudent for the DotAsia Board or the Election Committee to seek legal advice from a Hong Kong law firm as to validity of the vote in these circumstances.</p> <p>Having regard to the apparent uncertainty as to the effect of the .AM letter when it was ultimately received and considered by the board (ie whether the board should accept the termination; whether the member would 'reconsider'), we also recommend that the DotAsia Board conduct some governance training including in relation to the rules of the organisation.</p>
14.	The Interim Board Chair [Leonid Todorov] asked whether there substitute" voting on behalf of .MO	<p>An email dated 7 February 2023, from Holmes, Leong lo Hon, Chief Operations Officer at Monic to Raji Kumar, copied to Shantanu Acharya both of Nixi states:</p> <p><i>"I would let you know that, currently no voting representative assigned by the .MO CCTLD manager (MONIC). Upon the redelegation of .MO from UMAC to DSRT, the DotAsia Membership from .MO has been changed from MONIC held by UMAC to MONIC held by DSRT and now CTT. The voting email address on record for .MO is currently dotasia@monic.mo. In order for the nomination to be considered legitimate we require that the nomination/seconding email be sent from dotasia@monic.mo. Also as we understand that no voting representative has been assigned yet we should further confirm with CTT on the appointment of voting representative."</i></p>		<p>Section 2.1 of the BEP provides that:</p> <p><i>Before the Nomination Period, the Board Secretariat will send a notice to all members indicating the operational email address on the Board Secretariat's record. Members may notify the Board Secretariat to confirm or update the email address from which a Member would be using to make nominations, seconds, and to cast votes.</i></p> <p>Further, section 2.2 of the BEP provides that at the opening of the Voting Period, the voting credentials will be emailed to the voting representative of each eligible Member.</p>	<p>We note we have not seen any correspondence to or from the Board Secretariat seeking confirmation of voting representative of .MO prior to Nominations Period. Further, we have not seen the voting confirmation email sent to the scrutineer from .MO. However, the Board Minutes of 25 and 27 January 2023, indicated that the voting representative had been clarified with MONIC and CTT.</p> <p>We note the ballot was sent to the dotasia@monic.mo, being the email address identified in the email from the Chief Operations Officer of MONIC on 7 February 2023.</p>

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		<p>The DotAsia Board Meeting Minutes of 25 and 27 January 2023 list as an action item no "2020.01.A01 "Follow up with MONIC and CTT on obtaining clarification and voting representative for .MO." The remarks are "Completed."</p> <p>The email from the Scrutineer to the Election Committee of 27 February 2023 provides details of the .MO vote and show that the ballot was sent to dotasia@monic.mo and the vote as made by "MONIC", there was no individual identified as a voting representative on the ballot.</p>			<p>We note that the voter on the voter ballot has been identified as "MONIC", with no individual voting representative identified.</p> <p>Section 2.2 of the BEP requires the voting credentials be emailed to the "voting representatives". It is not clear whether this is an individual or the email address referred to at section 2.1 of the BEP. We consider that it is prudent that the BEP is clarified to identify an individual voting representative be specified for a Member.</p>
15.	<p>Email from Leonid Todorov on 26 February 2023 at 3:24pm:</p> <p>Following Members confirmed, with consent, they voted for Mr. Shantanu Acharya:</p> <p>.ir .uz .kz .in .mn .hk .id .ph .nu .cn .sg .kh (total: 12 votes)</p>	<p>The final results identified 11 votes for Shantanu Acharya.</p> <p>On 25 February 2023, the Scrutineer provided a full list of the voting Members, but not the voting results. Each of the voting Members identified are listed in the spreadsheet. The Scrutineer confirmed that each of the votes were verified and confirmed.</p>	<p>On 25 February 2023, the Election Chair responded to Leonid Todorov confirming receipt of his email and that the Election Committee would include it in their enquiry.</p>	<p>Section 2.3 of the BEP provides that "<i>the Election Committee and the third-party scrutineer will have access to the voting ballots to perform their monitoring and agreed procedures</i>".</p> <p>Additionally, voters are informed of this and are required to accept the Transparency Agreement as follows: "<i>Please note that this poll is not anonymous. This means the poll administrators (Third Party Scrutineer, Election Compliance Administrator and Election Committee) have access to the full details of your voting records for vote validation purposes.</i>"</p>	<p>There is nothing in the BEP or the M&A that requires the Election Committee to release any details on specifics of any votes cast for any candidate. Further, releasing results to candidates would be outside of the parameters of the Transparency Agreement accepted by voters.</p> <p>The Election Compliance Administrator and Election Committee are however, permitted to access to full details of voting records for vote validation purposes should they need to validate each of the voters. However, we note that the Election Committee is not obliged to check the individual votes and should not advise the Candidate of who did in fact cast positive votes for him. It would be appropriate for the Election Committee to confirm the process followed and therefore accuracy of the final vote count.</p>
16.	<p>Email from Leonid Todorov on 26 February 2023 at 3:24pm:</p> <p>Following Members confirmed, with consent, they voted for Mr. Kashif Adeel:</p> <p>.ir .uz .kz</p>	<p>The final results identified 9 votes for Kashif Adeel.</p> <p>On 25 February 2023, the Scrutineer provided a full list of the voting Members, but not the voting results. Each of the voting Members identified are listed in the spreadsheet. The Scrutineer confirmed that each of the votes were verified and confirmed.</p>	<p>On 25 February 2023, the Election Chair responded to Leonid Todorov confirming receipt of his email and that the Election Committee would include it in their enquiry.</p>	<p>Section 2.3 of the BEP provides that "<i>the Election Committee and the third-party scrutineer will have access to the voting ballots to perform their monitoring and agreed procedures</i>".</p> <p>Additionally, voters are informed of this and are required to accept the Transparency Agreement as follows: "<i>Please note that this poll is not anonymous. This means the poll administrators (Third Party Scrutineer,</i></p>	<p>There is nothing in the BEP or the M&A that requires the Election Committee to release any details on specifics of any votes cast for any candidate. Further, releasing results to candidates would be outside of the parameters of the Transparency Agreement accepted by voters.</p>

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Maddocks

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	.in .mn .hk .id .ph .nu .kh (total: 10 votes)			<i>Election Compliance Administrator and Election Committee) have access to the full details of your voting records for vote validation purposes."</i>	The Election Compliance Administrator and Election Committee are however, permitted to access to full details of voting records for vote validation purposes should they need to validate each of the voters. However, we note that the Election Committee is not obliged to check the individual votes and should not advise the Candidate of who did in fact cast positive votes for him. It would be appropriate for the Election Committee to confirm the process followed and therefore accuracy of the final vote count.

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Maddocks

CONFIDENTIAL & SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE

Report for DotAsia Organisation Limited

Review of 2023 Election Process

June 2023

Contents

1.	Background and Overview	3
1.1	Introduction.....	3
2.	Engagement, Qualifications and Assumptions	4
2.3	Our conclusions and recommendations are set out in this report.....	4
3.	Review of Issues.....	4
4.	Other Matters Identified	9
4.1	<i>Length of Dispute Resolution Period.....</i>	<i>9</i>
4.2	<i>Release of Preliminary Results</i>	<i>10</i>
5.	Recommendations – Future Elections	11
6.	Recommendations – Upcoming By-Election and 2023 Board Re-Election	12

1. Background and Overview

1.1 Introduction

- 1.1.1 DotAsia is a not-for-profit, community membership-based organization headquartered in Hong Kong. DotAsia is the Registry Operator for the .Asia top-level-domain (TLD) – the designated web address for Asia and Asian communities worldwide. DotAsia was incorporated on 12 September 2006 by Memorandum and Articles of Association (**M&A**).
- 1.1.2 DotAsia has two types of defined members, Sponsor Members and Co-Sponsor Members. The Board of Directors of DotAsia comprises a maximum of 11 members: 8 Directors nominated and elected by Sponsor Members and two seats nominated and elected by Co-Sponsor Members,¹ and one seat for the Chief Executive Officer.²
- 1.1.3 To ensure geographical diversity, there is a requirement that one Director from each sub-region, being North and Northeast Asia, South and Southeast Asia, Middle East, Asia Minor and Eurasia and Australasia and Pacific is appointed to the Board.³
- 1.1.4 The rules and procedures for the DotAsia Organisation Board Elections are set out in the M&A and a Board Elections Procedure provides clarifications, interpretations and additional details for the implementation of the Board Elections. The Board Elections Procedure for the 2023 Board Election was “BGC-004 Board Elections Procedure (Version 1.5)” (**BEP**).
- 1.1.5 The nomination period for the 2023 Board Election ran from 23 December 2022 until 20 January 2023. Voting for the 2023 Board Election commenced on 30 January 2023 and concluded on 13 February 2023.⁴
- 1.1.6 Results of the 2023 Board Election were announced to the DotAsia community at the Annual General Meeting on 26 February 2023 and newly elected Board members assumed office that day.
- 1.1.7 There were 4 Board vacancies in the Sponsor Member category and the following candidates were elected:

Candidate	Sub-Region
Jordan CARTER	Australasia & Pacific
Jose Emmanuel DISINI	Central and South East Asia
Maureen HILYARD	Australasia & Pacific
Nicole T. I. CHAN	North & East Asia

¹ Article 32, M&A

² <https://www.dot.asia/dotasia-organisation/community-governance/>

³ Article 33, M&A

⁴ We note the CNNIC vote was conducted outside of this time due to an issue being raised during the dispute resolution period.

1.1.8 There was one Board vacancy in the Co-Sponsor Member category and the following candidate was elected

Candidate
Akinori MAEMURA

1.1.1 We understand that a by-election is required, and will be held following the resignation of 3 Board members in April 2023:⁵

- (a) Murad IBRAGIMOV
- (b) Leonid TODOROV
- (c) Arthur CHANG

1.1.2 It is proposed that at the same time of this by-election, the 2023 Board Election will be re-run (for the Sponsor Category, and to the extent of the random selection of candidates).

2. Engagement, Qualifications and Assumptions

- 2.1 Maddocks has been engaged to support the Election Committee by considering and providing a report in relation to process queries or concerns raised by candidates and other parties in respect of the 2023 Board Elections.
- 2.2 In conducting the review and providing our report, Maddocks has relied upon the scope and accuracy of the information, materials and instructions provided to us. If our instructions change or further information, materials or instructions come to light, this may alter our report.
- 2.3 Our conclusions and recommendations are set out in this report.

3. Review of Issues

3.1 *Two Candidates [Santanu Acharya (Sponsor Member category)] [Jose Disini (Sponsor Member category)] sought to have their Bio and Candidate information uploaded to the voting platform and election website after the deadline on 24 January 2023.*

Election Committee Decision/Response

The Election Committee resolved to stand by the original deadline of Jan 24, 2023, such that any materials received after that date would not be uploaded to the voting platform and Election website for the following reasons:

- The deadline had been included in information provided to the candidates and they had been informed that *“Late submission of candidate information will not be posted on the elections page or voting platform after the deadline.”*
- Almost 1/3 of the possible electorate had cast their votes in the absence of any material being provided for upload.

⁵ <https://www.dot.asia/dotasia-organisation/community-governance/>

- Election staff made reasonable efforts with all candidates providing reminders prior to the deadline.

Review of Election Committee Response

We consider that the decision of the Election Committee was appropriate, given the information provided to nominees by the Board Secretariat.

- 3.2 *During Voting Period the Scrutineer did not receive voting email confirmation within 48 hours of voting by a voter. The Scrutineer had also sent a reminder to the voter 24 hours after voting which remained unanswered.*

Election Committee Decision/Response

The Election resolved that to reduce the risk that the voter had not checked all email folders (SPAM) etc for the Scrutineer’s email, the Election Committee would email the voter directly providing a further 24 hours for the validation following which the vote would be invalidated.

This same procedure was adopted two further times during the Election.

Review of Election Committee Response

We consider that the decision and actions of the Election Committee were appropriate.

- 3.3 *A then Board Member and Candidate [Kashif Adeel] questioned the secondment of a Candidate [Khan Md.Mahfuzus Salam] by a representative of APRALO as they had “already resigned as vice chair and not part of APRALO team” and that “the secondment should not be counted and the candidate should be disqualified for further steps.”*

Election Committee Decision/Response

The Election Committee decided that based on the evidence they had sighted, there was no fair bases to reject the validity of the APRALO secondment. For this reason, the Candidate nominated by APNIC and Seconded by APRALO was justified as being in full compliance with the BEP.

Review of Election Committee Response

We consider that the Board Secretariat and the Election Committee followed the BEP in confirming the voting representative.

The actions of the Board Secretariat and Election Committee were appropriate

- 3.4 *Candidate [Kashif Adeel] requested details of specific votes cast for him as he did not feel the results were fair and transparent.*

Election Committee Decision/Response

The Election Committee advised that they would not release any details on specifics of any votes cast for any Candidate. The Election Committee also directed the Candidate to the Transparency Agreement.

Review of Election Committee Response

We consider that the Election Committee acted appropriately by not providing the requested information.

- 3.5 *Candidate [Santanu Acharya] requested to know if .BT, .AM, .MO and .AF had voted as he felt there were discrepancies.*

Election Committee Decision/Response

The Election Committee advised the Candidate that they would not release any specific or non-anonymized information about the voters.

The Election Committee referred the Candidate to the Transparency Agreement and to the details of the number of possible individual voters and votes cast detailed in the scrutineers report.

Review of Election Committee Response

We consider that the Election committee acted appropriately by not providing the requested information.

- 3.6 *Candidate [Kashif Adeel] requested an explanation of why the Middle East is not considered under the regional diversity.*

Election Committee Decision/Response

The Election Committee confirmed that the current Board's geographical makeup is listed on the Election website and that, as outlined in correspondence between the secretariat and Members and the Election Committee and Members, the only geographic diversity consideration in this Election was the sub-region of Australasia and Pacific.

Review of Election Committee Response

We consider that the Election Committee's response was appropriate.

- 3.7 *Chair of the Board Finance Committee/Candidate requested Scrutineer engagement details due to concerns stated in the "Practitioner's Responsibilities" section of the Scrutineer Report. [Santanu Acharya] [Kashif Adeel]*

Election Committee Decision/Response

The Election Committee confirmed that the Scrutineer would manage all interactions and correspondence regarding matters relating to them separately.

Further, the Scrutineer performed their scope in the agreed-upon procedures in the engagement and that it was not an assurance engagement.

Review of Election Committee Response

Section 2.3 of the BEP was followed and the Scrutineer was engaged to perform an agreed-upon procedures engagement in accordance with the Hong Kong Standard on Related Services (HKSRS) 4400 (Revised), Agreed-Upon Procedures Engagements (acknowledged by the Board of DotAsia).

We consider that the response of the Election Committee was appropriate.

- 3.8 *Chair of the Board Finance Committee requested details on the voter email validation process. [Kashif Adeel]*

Election Committee Decision/Response

The Election Committee provided detail of the voter email validation procedure.

Review of Election Committee Response

The voter validation process set out in the Election Committee’s correspondence provides additional steps to those in the BEP to validate votes.

We note that the bounced email notifications in the “Download Bounced Email” section of the BigPulse platform did not appear to be set up for this Election, however it was not required under the BEP. As such there was no irregularity.

- 3.9 *Board member requested clarification of handling of CNNIC ballot, possible duplication of votes, and concerns about voting after preliminary results were issued during the voting dispute period. [Leonid Todorov] [Santanu Acharya] [Murad Ibragimov].*

Election Committee Decision/Response

Only one ballot received to the BigPulse platform by CNNIC was accepted. The CNNIC vote was cast within an additional short time frame allowed by the Election Committee for the Member entity to do so due to a technical IP Address blocking issue affecting the receipt of the voting ballot being received by CNNIC.

The Election Committee also noted the additional vote when cast, if confirmed, may or may not change the preliminary results that the Election Committee received at the beginning of the 96 hr dispute period.

Review of Election Committee Response

The issue was raised by CNNIC within the dispute resolution period. In circumstances where CNNIC was entitled to vote, but unable to do so by reason of technical issues, it was appropriate for them to be granted additional time to cast their vote.

We also note that there is no evidence of duplicate voting by CNNIC.

As an aside, we note that there was no individual identified as a voting representative on the ballot. Section 2.2 of the BEP requires the voting credentials be emailed to the “voting representatives”. It is not clear whether this is an individual or the email address referred to at section 2.1 of the BEP.

- 3.10 *Board member requested clarification on why 24 ballots were issued for 25 Sponsor members. [Leonid Todorov].*

Election Committee Decision/Response

The Election Committee resolved that in circumstances where there was a dispute, doubt or question between current representation of the Member and anyone no longer associated with the Member claiming to maintain any representation status, that a Letter of Authority from the Members Board of Senior Management should be required to validate any such claims.

Review of Election Committee Response

Section 2.1 of the BEP was followed and the inability to confirm a representative was reported to the DotAsia Board via the Board Secretary. We consider that the decision made by the Election Committee was appropriate.

It is not clear whether the Election Committee feedback about .TJ was shared with the Board by the Board Secretary. The Election Committee does not appear to have received any further direction from the DotAsia Board prior to the Election.



- 3.11 *Candidate challenged the voting system random draw method as it was done without the presence of candidates. [Santanu Acharya]*

Election Committee Decision/Response

The Election Committee noted that there is no requirement for the 'drawing of lots' to occur in the presence of any DotAsia members. The Election Committee further noted that BigPulse had confirmed that they performed manual random selection on the tied candidates to fill the final three vacancies of the four remaining after the candidates receiving the highest and second highest number of votes (which also satisfied the geographic diversity requirement) were selected.

Review of Election Committee Response

In accordance with the M&A and the BEP, there was no requirement to have the Candidates present during the drawing of the lot. We consider that the decision made by the Election Committee was appropriate.

- 3.12 *Candidate [Santanu Acharya] noted that the Scrutineer did not observe the BigPulse voting system and was not present during the random draw.*

Election Committee Decision/Response

N/A

Review of Query

The appropriate process was followed.

- 3.13 *Sponsor Member [.AM] wrote to the Chair of the DotAsia Board after the dispute notice period, in early March 2023, asserting that they had not authorised a vote and noting that the Sponsor Member [.AM] had shared with the DotAsia CEO their membership termination notice well before the election (on 7 January 2023).*

Election Committee Decision/Response

N/A

Review of Issue

We have not seen anything to suggest that the Election Committee or the Board Secretariat were provided with details of the termination .AM's membership prior to the Election. Further, .AM was listed on the DotAsia website at the opening of the Voting Period (and was still listed as at 22 May 2023) in accordance with section 2.2 of the BEP. As such, both the Election Chair and Board Secretariat acted appropriately with the knowledge that they had.

However it is our view that, under Article 9 of the M&A, .AM's email of 8 January 2023 terminated its membership as at that date. As such, .AM was not entitled to vote in the election. This is a matter that should have been brought to the attention of the Board Secretariat.

The BEP does not set out a process or deemed outcome where there is an irregularity of this type.

The question of whether the .AM's membership termination affects the validity of the outcome of the election is a matter to which Hong Kong company law applies and should be the subject of specific Hong Kong legal advice if necessary.



However, given the irregularity, and noting the upcoming by-election, it would be prudent to “re-run” the election in respect of the affected membership class together with that by-election.

- 3.14 *The Interim Board Chair [Leonid Todorov] asked whether there was “substitute” voting on behalf of .MO.*

Election Committee Decision/Response

N/A

Review of Query

We have not seen any correspondence to or from the Board Secretariat seeking confirmation of the voting representative of .MO prior to the Nominations Period. Further, we have not seen the voting confirmation email sent to the scrutineer from .MO. However, the Board Minutes of 25 and 27 January 2023, indicated that the voting representative had been clarified with MONIC and CTT.

As such, we consider that an appropriate process was followed.

Separately, we note that the voter on the voter ballot has been identified as “MONIC”, with no individual voting representative identified. Section 2.2 of the BEP requires the voting credentials be emailed to the “voting representatives”. It is not clear whether this is an individual or the email address referred to at section 2.1 of the BEP.

- 3.15 *Email from Leonid Todorov of 26 February 2023 at 3:24pm specifying Members who had confirmed with consent, they voted for Mr. Shantanu Acharya and/or Mr. Kashif Adeel.*

Election Committee Decision/Response

The Election Committee Confirmed receipt of the email and noted that they would include it in their enquiry.

Review of Query

There is nothing in the BEP or the M&A that requires the Election Committee to release any details of votes cast for any candidate. Further, releasing results to candidates would be outside of the parameters of the Transparency Agreement accepted by voters.

The Election Compliance Administrator and Election Committee are however, permitted to access full details of voting records for vote validation purposes should they need to validate each of the voters. However, we note that the Election Committee is not obliged to check the individual votes and should not provide to the Candidate the details of who cast positive votes for him. Subject to the matters raised in paragraph 1.13, it would be appropriate for the Election Committee to confirm the process followed and therefore accuracy of the final vote count.

4. Other Matters Identified

- 4.1 *Length of Dispute Resolution Period*

Election Committee minutes of meeting note that “*there is a 96 hours voting dispute period for the election*”.

Section 2.4 of the BEP, Dispute Resolution, provides that:

“Any complaint, disputes and appeals regarding the conduct of the election must be lodged in writing with the Election Chair (electioncommittee@board.dot.asia). Such notices of dispute or appeals must be lodged no later than 96 hours after the closing of the Voting Period or the Nomination Period if no voting is required. The dispute resolution process is intended for complaints and appeals against the process and not the results of the election.

Members may lodge notices of dispute and appeals through their voting representatives. Candidates may lodge a notice of dispute directly with the Election Chair. No other party is entitled to lodge a notice of dispute.

The Election Chair, in consultation with the Election Committee, will resolve the dispute at his or her discretion. The Election Chair will provide notice of all lodged disputes and the Election Chair’s decision before announcing the election results.”

In our view the effect of section 2.4 is that an objection in relation to process can be lodged at any time during the election process, up until 96 hours after the close of the Voting Period or the Nomination Period if no voting is required.

That is, the Dispute Resolution Period:

- (a) starts at the commencement of the election process 96 hour window to lodge a dispute, and
- (b) ends 96 hours after the closing of the Voting Period.

We also regard it as desirable for process concerns to be capable of being raised throughout the election process.

4.2 *Release of Preliminary Results*

Following the closing of the Voting Period the Election Committee was sent the preliminary results from the BigPulse voting platform in accordance with the Poll Configuration. This is consistent with the Transparency Agreement, accepted by voters which stated: *“Please note that this poll is not anonymous. This means the poll administrators (Third Party Scrutineer, Election Compliance Administrator and Election Committee) have access to the full details of your voting records for vote validation purposes.”*

Section 2.3 of the BEP provides that *“the Election Committee and the third-party scrutineer will have access to the voting ballots to perform their monitoring and agreed procedures”*.

During the 14 February 2023 Election Committee Meeting which was held approximately 2 hours after the Voting Closing Period (23:59 UTC on 13 February 2023), the preliminary election results were presented by the 3rd Party Election Compliance Administrator. Also in attendance at this meeting was the Board Secretariat, the Board Secretary and the Executive Assistant at DotAsia.

The preliminary election results were therefore presented:

- (a) during the dispute resolution period under section 2.4 of the BEP (which was to end at 23:59 UTC on 17 February 2023);
- (b) prior to the Scrutineer receiving confirmation from one voter of their vote (by 9:30 UTC on 15 February 2023);
- (c) prior to one organisation [.CNNIC] conducting their vote due to IP blocking issues. We note this organisation raised an appeal within the 96 hour period following the closing of the Voting Period; and

- (d) to the attendees of the Election Committee Meeting including, the Election Committee, the Board Secretariat, the Board Secretary and the Executive Assistant at DotAsia.

The preliminary results did not identify votes cast by specific members, however, in light of the CNNIC late voting, the impact of its votes would be capable of identification by attendees.

The provision of preliminary voting results prior to the conclusion of the voting period (including confirmation of votes) and prior to the end of the dispute period resolution and appeals period (section 2.4 of the BEP) places the Election Committee at risk of allegations of interference and/or bias (highlighted by the CNNIC issue). This is particularly so when preliminary results are subject to change, as was the case here due to additional votes and different result from the random lot.

While we regard the actions of the Election Committee as appropriate, we recommend that the 'interim' step of disclosing preliminary results prior to the conclusion of the voting period be removed from the election process.

Further, the preliminary results were shown to an audience broader than section 2.3 of the BEP and the Transparency Agreement, being to the Board Secretariat, the Board Secretary and the Executive Assistant. While section 2.2 of the BEP, Nomination, provides "*The Board Secretariat shall work under the supervision of the Board Secretary on the administration of the Board Elections*", in our view this does not extend to access to preliminary election results. Nor, in our view, would it be appropriate for the policy to specify that the election results should be shared in this way.

5. Recommendations – Future Elections

- 5.1 As a general observation, we note that the election process is quite complicated, and would benefit from being simplified.
- 5.2 Following are our 'short form' recommendations arising from the review conducted and summarised above, which should be incorporated in revised process for future elections.
- 5.3 Recommended changes
 - 5.3.1 Procedures should be articulated for Election Committee decision making processes during the election process:
 - (a) for matters that are not "complaints, disputes and appeals regarding the conduct of the election";
 - (b) to provide clarification on how Election Committee decisions should be made, in light of section 2.3 of BEP which provides that the individuals on the Election Committee are appointed to "to examine the nomination and voting processes" and specifically are to "be responsible for examining the processes of the election" related to a certain member type. For example, for decisions just impacting a relevant member type should confirmation from the Election Committee member who is responsible for that category of member be obtained, rather than a majority vote.
 - 5.3.2 Express confirmation of the commencement of the dispute resolution time period.
 - 5.3.3 Removal of the 'interim' step of disclosing preliminary results prior to the conclusion of the voting period.



- 5.3.4 Clearer procedures/clarification on “access to the voting ballots” prior to the ending of the dispute resolution period resolution, including whether this includes results and whether access is also available to other attendees at Election Committee meetings (for example the Board Secretary and the Board Secretariat).
 - 5.3.5 Clearer procedures/clarification on the role of the Board Secretary, the Board Secretariat and the Election Compliance Administrator through the Election process.
 - 5.3.6 Detailed guidelines regarding the drawing of a lot, including whether this is to take place automatically or manually by the voting platform. Consideration should be given to having the drawing of lots automated and conducted by the voting platform.
 - 5.3.7 Timeframes for confirmation of votes by the Scrutineer and consequences if they are not followed.
 - 5.3.8 Clarification of the voter email validation process. This should include bounced email notifications being set up in the voting platform to ensure that any issues with bounced emails are identified at the earliest opportunity.
 - 5.3.9 Inclusion of an express statement that additional time may be afforded to cast votes if there is a technical issue preventing a voter from receiving the voting ballot.
 - 5.3.10 A requirement that an individual voting representative for a Member be specified. To ensure consistency, it may be desirable for the BEP to require a letter from the Member’s Board to confirm the voting representative [only if this is considered to be practical].
- 5.4 Having regard to the apparent uncertainty of the effect of the .AM letter when it was ultimately received and considered by the board (ie whether the board should accept the termination; whether the member would ‘reconsider’), we also note that the DotAsia Board may be assisted by some governance training, including in relation to the rules of the organisation.
- 5.5 Finally, and as noted above, given the irregularity with respect to the inclusion of .AM’s votes. we recommend that the election for the affected membership class be “re-run” with the upcoming by-election. While one of the spots filled met the regional requirement, we note that two of the nominees were from the same region. Accordingly, the election should be re-run for all four available positions.

6. Recommendations – Upcoming By-Election and 2023 Board Re-Election

- 6.1 Noting that the recommendations above may take some time to implement, for the purpose of the upcoming by-election/2023 Board Re-Election, we would recommend that the following are implemented:
- 6.1.1 Automation of the random drawing of the lot on the voting platform (Big Pulse);
 - 6.1.2 A process for confirming the voting representative, including for example confirming it with the CEO or Board of the Member.

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MEMORANDUM

TO:	Maddocks
FROM:	Georgiou Payne Stewien LLP
DATE:	18 October 2023
RE:	Advice regarding irregular appointment of directors to the board of DotAsia Organisation Limited (" Company ")

I. BACKGROUND

1. We understand that you have advised the Company that for the purpose of its most recent annual general meeting (the "**2023 AGM**"), due to a vote made by a person that is no longer a member of the Company, the appointment of a number of recently appointed directors is potentially irregular.
2. For the purposes of this memorandum of advice, we have been provided with copies of the following:
 - The Company's memorandum and articles of association adopted on 12 September 2006 ("**M&AOA**");
 - The Company's board elections procedures as adopted on 21 December 2022 ("**BEP**"); and
 - The notice of board elections 2023 dated 23 December 2022 ("**Notice**").
3. By way of background, we understand or otherwise note from the documents provided that:
 - (A) The Company has two types of defined members: Sponsor Members and Co-Sponsor Members.
 - (B) The Company's board of directors ("**Board**") comprises a maximum of 11 directors: 8 nominated and elected by Sponsor Members, two nominated and elected by Co-Sponsor Members¹ and one reserved for the Chief Executive Officer.
 - (C) There is a requirement that one director from each sub-region, being North and Northeast Asia, South and Southeast Asia, Middle East, Asia Minor and Eurasia and Australasia and Pacific, is appointed to the Board².
 - (D) All directors serve on the Board for two years with each of their term expiring upon the conclusion of an annual general meeting³. Retiring directors are eligible for re-election⁴.
 - (E) Upon the 2023 AGM, there would be five Board vacancies: four of which are required to be nominated and elected by Sponsor Members and one of which is required to be nominated and elected by Co-Sponsor Members.

¹ Pursuant to article 32 of the M&AOA.

² Pursuant to article 33 of the M&AOA.

³ Pursuant to article 37 of the M&AOA.

⁴ Pursuant to article 38 of the M&AOA.

- (F) The timeline for the elections for directors to be appointed at the 2023 AGM is as follows:
- December 22, 2022 (Thu) – seating of the Board election committee
 - December 23, 2022 (Fri) – nomination period begins
 - January 20, 2023 (Fri) – nomination period ends
 - January 29, 2023 (Sun) – nominations report sent to the Board
 - January 30, 2023 (Mon) – voting period begins
 - February 3, 2023 (Fri) – call for the 2023 AGM
 - February 13, 2023 (Mon) – voting period ends
 - February 26, 2023 (Sun) – 2023 AGM and newly elected directors assume office
- (G) Notwithstanding that .AM terminated their membership as a Sponsor Member on 8 January 2023⁵ and therefore had no entitlement to vote, .AM had voted during the 2023 Board elections. .AM's vote was counted during the 2023 Board elections, which may have affected the results of the 2023 Board elections and may have caused the four Sponsor Member-elected directors ("**Affected Directors**") to be irregularly appointed.
- (H) Neither the M&AOA and the BEP sets out any procedure for dealing with such irregularities. That said, article 40(d) of the M&AOA provides that any vacancy in the Board shall be filled by a by-election.
- (I) We have been instructed that three other directors have resigned, for reasons unrelated to the facts described above.
- (J) Due to other circumstances, the Company is concerned that if the Affected Directors were not properly appointed then this may mean that the Board is unable to function.

4. We have been asked to advice on the following:

- 4.1. In light of the irregularity in appointment of the Affected Directors, is a by-election necessary?
- 4.2. If a by-election is necessary, what would be the optimal procedure to avoid or minimise the period of a non-functional Board?

II. WHETHER A BY-ELECTION IS REQUIRED

5. Directors of Hong Kong companies are required to be appointed in accordance with such company's articles of association.
6. The M&AOA and the BEP are clear as to the procedure required for appointing directors (i.e., it must be through an election process).
7. Given the irregularity involved in the appointment of the Affected Directors, the Affected Directors should be treated as not properly appointed or having ceased to hold office (whichever is applicable) such that there are four vacancies in the Board in place of the Affected Directors.
8. Accordingly, given the vacancies, a by-election is required in accordance with article 40(d) of the M&AOA. In our view, this should be conducted in accordance with article 40 of the M&AOA

⁵ We have not, and have not been asked to, consider whether .AM's membership termination had been effective. For the purposes of this memorandum, we assume that .AM's membership was properly terminated with effect from 8 January 2023 and, accordingly, .AM had not been entitled to vote during the 2023 Board elections.

and the BEP, as neither of these rules set out any procedure for an expedited election procedure.

III. OPTIMAL PROCEDURE

9. As mentioned above, the Company should immediately cease to treat the Affected Directors as being Board members. It is not avoidable that the Board currently already has four vacancies.

10. Notwithstanding the aforesaid, section 461(1) of the Companies Ordinance (Cap. 622 of the laws of Hong Kong) ("**Ordinance**") provides that:

"The acts of a person acting as a director are valid despite the fact that it is afterwards discovered—

(a) that there was a defect in the appointment of the person as a director;

...

(c) that the person had ceased to hold office as a director; or

..."

11. This is reiterated in article 59 of the M&AOA:

"All acts done at any meeting of Directors... shall, notwithstanding that it may afterwards be discovered that there was some defect in the appointment of any such Director..., be as valid as if such person had been duly appointed and was qualified to be a Member of the Board."

12. Accordingly, all Board decisions made prior to the discovery that the Affected Directors were not duly appointed would not be considered to be invalid. However, we recommend that all decisions made thereafter should be rectified by a properly constituted Board, once such Board is constituted.

13. However, this does not mean that the Affected Directors should continue to function as Board members whilst relying on section 461(1) of the Ordinance and/or article 59 of the M&AOA. Instead, the Affected Directors should immediately be informed of the irregularity in their appointment and asked to cease acting as director.

14. It is not necessary for the Company to remove the Affected Directors as directors or for the Affected Directors to resign as they were never duly appointed in the first place.

15. It should be noted that, pursuant to article 55 of the M&AOA:

"The continuing Directors may continue to act, and to carry out all the functions of the Board notwithstanding any vacancy."

16. We therefore recommend that the remaining directors (including the two directors appointed by the Co-Sponsor Members) can continue to exercise the powers granted to the Board notwithstanding that there are four vacancies in place of the Affected Directors.

17. As per article 40(d) of the M&AOA and the procedure set out in paragraph 2.7 of the BEP, the process for the by-election should be:

Day 0	Identification and determination of a vacancy by the Board
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Day 1	Extraordinary general meeting called for Day 30
Day 3	Nomination period begins
Day 8	Nomination period ends
Day 22	Voting period begins
Day 27	Voting period ends
Day 30	Extraordinary general meeting

B.W.S

Appendix 5:

September update on the progress of the review of matters and expectations from the Final Reporting from the 2023 EC to the dotAsia Board EC. <SNIPED from the email sent>

On Sat, Sep 16, 2023 at 10:43 AM Election Committee <electioncommittee@board.dot.asia> wrote:

Dear Jordan, Edmon and dotAsia Board,

Please find attached, by way of update and your consideration of our proposed next steps, the Report prepared by Maddocks in June after their detailed review and analysis of matters relating to the 2023 Elections. Along with this report from Maddocks, I have also provided a PDF copy of their previously provided draft background analysis documentation for each of the 'Review Matters Raised with [the] Election Committee during and after the 2023 Elections' that predated this Report.

As you are all very well aware of the lead-up to and issues raised at the time of this year's Election of Members to the dotAsia Board, I will not include them in this brief cover note to this update. However, they form part of the still forthcoming 'Report from the 2023 Elections Committee', which the committee has yet to convene to review and sign off on, pending any feedback from you on this update.

As a result of their detailed and extensive review, we are pleased to foreshadow that in our EC Report. We will be able to assure the Board and the dotAsia Membership that the conduct of this election was not 'compromised' and was in keeping with the current Board Election Procedures (BEP) and, where applicable, the dotAsia Memorandum and Articles (M&A) and that the actions of the Election Committee were appropriate in the addressing of issues and concerns raised.

Further, we draw your attention to the important and, in our view, essential recommendations from Maddocks to the Board via this Elections Committee investigation into these matters as stated in their report "While we regard the actions of the Election Committee as appropriate, we recommend that the 'interim' step of disclosing preliminary results prior to the conclusion of the voting period be removed from the election process." as well as the other enumerated recommended changes under part 5 'Recommendations - Future Elections' specifically section 5.3, noting that these are short form recommendations and that Maddocks if instructed by us, is available and well prepared to assist with specific language for incorporation into final documentation to the BEP, we would value your feedback on that option.

In sections 5.4 and 5.5 of the Maddocks report, they note the apparent uncertainty of the effect of the .AM's letter of resignation (as to when it was received and ultimately considered by the Board) and the inclusion of the .AM vote in the polling, and they recommend, as previously foreshadowed by the Election Committee Chair during the discussion around the time of your 2023 AGM as one likely outcome of our Review, that a by-election for the affected membership class is recommended to be conducted.

Report to the Members of dotAsia Regarding the 2023 Board Elections - Cheryl Langdon-Orr; 2023
Election Committee Chair - 31 October 2023

Since this report was received, it should be noted that the Election Committee Chair raised an additional matter with Maddocks regarding "...the 'best way' to minimise the hiatus or dysfunction of the Board during the by-election process..." This is related to the ability of your Board to maintain essential representational and quorum requirements etc.,

To this enquiry, we have received the following feedback from Michelle Dixon of the Maddocks team,

"...Unfortunately the Articles aren't clear on the question of how to address a potential quorum issue or the timing of resignation of directors.

As you will have noted, the M&A provides that:

1. Directors can be removed by a special resolution of the company;
2. Directors can retire.

The Directors otherwise serve on the Board for two years, with their terms expiring upon the conclusion of the annual general meeting (with the ability for a 90 day extension depending on the timing of the meeting).

I note that the Hong Kong Companies' Ordinance deals with the appointment and removal of directors. Obviously we're not qualified, and not able to, provide advice in relation to Hong Kong law. Given the lack of clarity in the M&A, I do think that advice from a Hong Kong firm should be sought in relation to a proposed by-election. If that is to be sought, it would probably also be worth seeking, as a first question, advice as to whether the by-election is required.

Subject to the advice provided in relation to Hong Kong law, the available options may be:

1. To run a by-election with the directors in place and subject to special resolutions being passed at a general meeting to remove the existing director's at that meeting (ie prior to the end of their two year term) and appoint in their place the directors elected by the by-election; or
2. Ask the directors to retire with effect at the conclusion of the election. This is subject to the caveat that Hong Kong law permits this.

Neither of these options is without risk – the first of course is what will occur if the special resolutions aren't passed. The second risk, which may be more easily managed by conversations with the directors, is if they do not agree to retire.

Finally, I note that the M&A provides that all acts done at any meeting of Directors shall be valid even if discovered that there was a defect in the appointment of any such Director (Article 59)."

(signed Michelle Dickson via email to Cheryl Langdon-Orr as 2023 EC Chair)

Therefore based on this critical additional consideration, the Elections Committee, before its ultimate reporting and recommendations on these matters, would appreciate feedback as to the worth and utility of our extending our instructions to Maddocks that they find for us and engage with appropriate expert counsel in Hong Kong Companies Ordinance and Corporations Law to advise on these specific concerns, requirements and risks and thereby more fully equipping the dotAsia Board with as fulsome and complete information as possible to decide on the process of preparation for the conduct of upcoming elections and any triggering of by-elections based on these recommendations. We are confident such advice could greatly benefit the Board in its consideration and give considerable reassurance to the Membership of dotAsia regarding the diligence and integrity that has been applied to the review of these matters and the resulting recommendations proposed.

Thank you for your time in considering this update and for whatever feedback you may wish to formulate and return to us, after which, depending on the nature and next steps from that feedback and or instructions, the 2023 Election Committees Final Reporting and Recommendations will be forthcoming, and the work of the EC for this cycle can be deemed (we trust) complete and to the satisfaction of dotAsia Membership and the Board.

Signed <end snip>