

Background Paper:		Status:	For DotAsia Members		
DotAsia Board & Governance Reform 2023-2024					
Board Resolution:	2024.01.002	Approved:	2024.01.31	Produced:	2024.01.31
Maintainer:	DotAsia Board		Version:	For Members	
Prepared For:	For Members Consideration EGM 2024.02.24 & 26				
Related Policy(ies) / Document(s):	DotAsia M&A: https://www.dot.asia/policies/DotAsia%20M&A%202009-06-26.pdf BGC-004: https://dot.asia/BGC-004/				

This Background Paper provides background and analysis of options for considerations in the reforming of the DotAsia governance structure in relation to the Board Elections Procedures ([BGC-004](#)).

1. Background and Scope

The current DotAsia Board Elections Procedures are described in detail in BGC-004: Board Elections Procedures (BEP) and are in accordance with the DotAsia Memorandum & Articles of Association (M&A). Legal advice on the compliance of the BEP to the current [DotAsia M&A \(2009\)](#) had been obtained previously in response to questions raised by a former Board Director, and the findings support that the current BEP complies with the M&A, however certain aspects have been suggested to be updated to provide better clarity and to avoid confusion. A [summarized version](#) of the legal advice was included as part of the [Special Advisory](#) issued in Jan 2020 posted on the DotAsia website.

The [first BEP](#) was developed by the DotAsia Board with involvement from DotAsia Members in preparation for the [first DotAsia Board Elections](#) held in 2008. In 2009 the DotAsia M&A was amended and the term limits (previously limited to 3 consecutive terms) of Board Members were lifted. Thereupon, since [2010](#), the BEP was updated each year through a similar process which included the circulation of draft(s) to DotAsia Members as well as posting of the draft(s) to the DotAsia website for comments. The general process described within the BEP had been relatively stable across the years with adjustments and refinements incorporated based on experiences gained.

More significant changes were introduced in 2020 for the [Board Elections 2021](#), in response to mounting challenges from litigious entities, with the addition of the Election Committee, third-party scrutineer, and the voting process was moved (from an email process previously) to an online platform (BigPulse). Beginning in [2022](#), the BEP is published as [BGC-004 \(BEP2021\)](#) with the annual specifics (e.g. list of Board Directors with term ending as well as specific nomination and voting period days) posted separately on the DotAsia website.

In 2020, specialist legal advice was obtained for considering elected candidates to the DotAsia Board being of nationalities from a UN or US sanctioned country, for them to serve on the DotAsia Board as observers. A [Special Advisory on the Composition of the DotAsia Board](#) was issued in the process of the [Board Elections 2021](#), and particular provisions reflecting the arrangement incorporated into BEP2021. [BEP2022 \(BGC-004 version 1.5\)](#) was further updated to include considerations for situations where candidates withdraw their candidacy during the voting period.

Articles 32-34 of the current DotAsia M&A specifies the composition and rotation terms of the DotAsia Board as follows:

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32. Unless otherwise determined by the Company in general meeting, the Board of Directors shall consist of not more than eleven (11) persons. A maximum of eight (8) Directors shall be nominated and elected by the Sponsor Members and a maximum of two (2) Directors shall be nominated and elected by the Co-Sponsor Members and the election results reported at the annual general meeting of the Company in accordance with the provisions of Article 40.
33. Among the eight (8) Directors elected by the Sponsor Members, there shall be at least one (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.
34. The four (4) elected initial Directors representing the Sponsor Members who received most votes shall serve on the Board for two (2) years or until the next annual general meeting after the two (2) years served. The remaining four (4) elected initial Directors representing the Sponsor Members shall serve on the Board for one (1) year or until the next annual general meeting after the one (1) year served. The elected initial Director representing the Co-Sponsor Members who received most votes shall serve on the Board for two (2) years or until the next annual general meeting after the two (2) years served, while the remaining elected initial Director representing the Co-Sponsor Members shall serve on the Board for one (1) year or until the next annual general meeting after the one (1) year served.

The current rotation of the Board Directors would mean that at the AGM each year based on the Board election results, there is a potential that 50% of the Board would be comprised of new Directors to the Board. This arrangement may be acceptable in the past, which resulted in a reasonably stable Board for DotAsia for an extended period of time. In the view of recent governance challenges to DotAsia as well as to other Internet governance institutions including AfriNIC and APNIC, the rotation cycle as currently included in the M&A may expose DotAsia Board to capture by hostile entities, threatening the stability and functioning of DotAsia.

The [DotAsia application to ICANN](#) describes the original intent of the Board structure as follows:

To ensure that the Board of Directors is relevant and representative of the multicultural Pan-Asia and Asia Pacific region, geographical diversity will be an important criterion for the selection of the Directors. This geographical diversity requirement will be enforced once there are enough Sponsor Members present in the organisation from each of the 4 areas within the Pan-Asia and Asia Pacific region: North & Northeast Asia; South & Southeast Asia; Middle East, Asia Minor & Eurasia; and, Australasia & Pacific. When this occurs, at least one individual from each region will be represented on the Board. Geographical representation will be based on demonstrable heritage or inhabitant or citizenship of each Board candidate. A Geographical Diversity Consideration Liaison to the Board of Directors may be established to conduct outreach that can help ensure this requirement is met.

...

The direct and close involvement of many regional ccTLDs ensures a wealth of knowledge and expertise in the operational and policy management of a TLD registry in the Asia and Asia Pacific region. Furthermore, representation in governance from successful Asia Pacific Internet and Information Technology groups, provides broad representation and relevance from the

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Pan-Asia and Asia Pacific community. Together they create a well-balanced governance structure that forms a solid foundation for a successful TLD registry for Asia.

The participation from certain sub-regions has historically been low and often lacking in candidates for the Board elections. In the Board Elections 2014 an additional provision was added to the BEP2014 to address the case if no candidate from a particular geographical sub-region (for which there is a vacated seat) is nominated. This provision was utilized once in the Board Elections 2016.

In the development of .Asia as a gTLD, the experience has demonstrated that the knowledge for operation and policy management from ccTLDs may not be readily translatable to the confines and restrictions in the context of a gTLD under ICANN policy compliance and requirements. Furthermore, in the development of DotAsia as a not-for-profit organization aligned with the vision and mission that looks both to the operation of the .Asia and to advancing collaboration amongst the Asia Pacific Internet community, it is becoming evident that participation and cooperation with the regional Internet organizations such as APNIC, APSIG, etc., are increasingly important and fruitful.

2. Executive Summary

Recent developments in the global and regional Internet governance ecosystem, especially the attacks against governance structures of different institutions, along with the legal and disinformation challenges point to the need of strengthening the governance structures to protect institutions from capture as well as to ensure better continuity. DotAsia is no different in this matter.

This Paper recommends that the governance structure be reformed to become more robust including considering the election processes, composition, rotation, and better vetting of the eligibility of candidates standing for election to the Board.

On Sep 18, 2023, the DotAsia Board resolved to adopt a Draft Proposed Amendments to the DotAsia Articles of Association to engage DotAsia Members' input on the matter. On Sep 19, 2023, the draft was circulated to Members and posted on the DotAsia website (<https://www.dot.asia/proposed-amendments-to-the-dotasia-articles-of-association-2023/>). On Oct 7, 2023 an online survey was further circulated to DotAsia Members for their feedback. On Oct 8, 2023, a Community Engagement session was organized and conducted in hybrid mode including in person at the IGF 2023 venue in Kyoto as well as online. On Dec 12, 2023, a further Community Engagement session was held online to listen to input from DotAsia Members.

At the conclusion of this first round of input from Members, the organization have received feedback from 16 Members. Out of which, 12 Members expressed support for the proposed amendments, 2 Members expressed concern and did not support the proposed amendments, while 2 others provided additional suggestions without indicating whether they support the proposed amendments or not.

Some comments received suggested more progressive changes such as maintaining a smaller (or larger) Board; longer terms of Board Directors to the effect that Board Elections will not be required each year; more Board Directors to be appointed through the proposed Nomination Committee; and, to reconsider the membership categories, including to merge them.

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Given the current situation and challenges, the Board, after considering the general support for the already proposed amendments, and the imperative to update the DotAsia Articles to be current with and compliant with the updated Companies Ordinance in Hong Kong, as well as to strengthen key aspects of the governance structure to enhance stability and protect the organization against hostile capture, is inclined towards putting forth the proposed amendments from the Sep 2023 draft first, and further introduce the more progressive additional suggestions for changes after this round of amendments.

Further to the publishing of the 2nd Draft of the proposed amendments on Dec 28, 2023 which had included the feedback from DotAsia Members as explained above, legal advice was received, resulting in an adjustment to the Member termination process clarification, making it clearer that the breach of Code of Conduct would be a ground for expulsion. A number of minor adjustments were also identified, including the elimination of redundant paragraphs, improving the legal clarity of language, and use of terminology that is made consistent, such as the use of “Clause” vs. “Article” and “Ballot” vs. “Poll”, most of which related to the updated template provided by the Hong Kong Companies Registry.

A new provision had also been incorporated to address full Member participation in future changes to the Articles. Both changes were included in the Final Draft for consideration.

In the adoption of the amendments, 2 resolutions will be proposed:

1. Proposed Articles Amendments Package 2023
2. Proposed Amendment on future changes to the DotAsia Articles requiring special resolution (75%) of all Members irrespective of categories.

3. Options and Considerations

3.1 Board Composition & Geographical Representation

Currently the DotAsia Board is composed of 11 seats:

- 8 seats nominated and elected by Sponsor Members
- 2 seats nominated and elected by Co-Sponsor Members
- 1 seat for the CEO of DotAsia

The proposal for consideration:

- 6 seats nominated and elected by Sponsor Members
- 3 seats nominated and elected by Co-Sponsor Members
- 1 seat appointed by recommendation from the Nomination Committee (see section 3.3 below)
- 1 seat for the CEO of DotAsia

The arrangement of adding an additional seat from Co-Sponsor Members would allow for more participation from regional Internet institutions (e.g. Asia Pacific regional Internet community organizations). The inclusion of a seat to be appointed by recommendation from a Nominations Committee will provide the possibility to identify gaps in the skills required at the Board and invite qualified individuals to join the DotAsia Board.

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Currently according to Article 33 of the DotAsia M&A, “Among the eight (8) Directors elected by the Sponsor Members, there shall be at least one (1) Director from each of the four (4) areas within the Pan-Asia and Asia Pacific region”.

The proposal for consideration is to update the provision to being that “Among the Directors, there shall be Directors from at least three (3) out of the four (4) areas within the Pan-Asia and Asia Pacific region”.

This would allow better flexibility without compromising a reasonable level of geographical diversity within the Board. Also, this would mean that not only Directors returned from the Sponsor Members are considered, but also Directors returned from Co-Sponsor Members, as well as the Nomination Committee nominated Director. This would also effectively reduce the need for special considerations at the Board Elections for voting results. Together with the rotation cycle suggested below in section 3.2, this should better allow DotAsia to find good candidates from the different sub-regions, especially those who are not currently participating as actively.

3.2 Rotation and Term

Currently half of the elected seats on the Board: 4 from Sponsor Members, and 1 from Co-Sponsor Members, rotate each year, with Board Directors having 2 year terms. There are no term limits for elected Directors.

The proposal for consideration (based on the proposed Board composition in section 3.1 above):

- 3 year terms for Member elected and Nomination Committee nominated Board Directors
- Annual Board Election:
 - 2 seats nominated and elected by Sponsor Members
 - 1 seat nominated and elected by Co-Sponsor Members
 - 1 seat recommended by Nomination Committee and appointed by Board (Every 3 years)
- 3 consecutive term limit to be implemented after the completion of the transition period

This would ensure that each year, there would only be about one-third of the Board Directors rotating. This should better protect the DotAsia Board from capture based on the results within one election.

Given the prior experience on the level of participation in the DotAsia Board and Board Elections, it appears that good candidates are difficult to come by. Furthermore, in 2008-2009 when the Board considered the matter, it was understood that because DotAsia is not a pure community organization, but also operates the .Asia gTLD registry, continuity and knowledge on the Board is especially important. This remains an important consideration. In view of both the prior experience and the previous consideration, this Paper proposes that a 3 consecutive term limit of Directors be introduced after the transition period is complete. Meanwhile it will

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be important to build a consistent stream of good candidates interested to become DotAsia Board members and the Nomination Committee process supports such development.

3.3 Nomination Committee

Currently, no minimum qualifications are required for candidates standing for election onto the DotAsia Board. Given recent experience at DotAsia as well as in other institutions in the Internet governance ecosystem, this could lead to the election of Directors who may not be familiar with or even hostile to the ongoing DotAsia works. This becomes detrimental to the commitments DotAsia makes to the Asia Pacific Internet community as well as affects the trust and good reputation of DotAsia that has been built-up in the community.

Furthermore, not all DotAsia Members participate in the community actively, and many Members may be unfamiliar with the candidates put forward in a particular Board Election.

This Paper proposes that a Nomination Committee be seated with the following responsibilities:

- Identify good candidates for the DotAsia Board
- Vet nominated candidates and produce a final slate for the voting ballot provided to Members
- Recommend candidates for appointment

It is noted that a similar approach is used by the Internet Society (a vetting committee) in its election to the Board of Trustees, and considered to be included in the APNIC Executive Council elections¹. Meanwhile ICANN, and IETF both feature Nomination Committees in the selection of candidates to its boards. Each of the nomcoms have different features and the mechanics and benefits were studied for the development of the proposals put forward in this Paper.

In terms of identifying candidates for the DotAsia Board, the Nomination Committee should proactively identify good qualified candidates to be included on the Member voting ballot or to be recommended for Board appointment.

In terms of the vetting process, the Nomination Committee should consider conducting interviews with nominated candidates as well as gathering other information, including but not limited to the following aspects, in the determination of whether a candidate should be included in the voting ballot:

- Knowledge of DotAsia works – candidates should have an understanding of DotAsia’s work as a gTLD registry as well as its community commitments and participation in the global Internet Governance discussions.
- Community experience – it is preferred that candidates have experience in or are active participants at ICANN, IGF, NRIs or other relevant Internet community conferences and groups.

¹ <https://www.apnic.net/about-apnic/organization/structure/proposed-by-law-reform-2023/>

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- Conflict concerns – candidates should not be a litigant against the organization and should not be engaged in bad faith or derogatory actions against the organization and/or its directors and staff.
- Background reference – background check and previous conviction records could be requested and checked.
- Reference from community participants – references identified by candidates, as well as other general references, could be sought and checked.

Appeals to any decision by the Nomination Committee would be handled by the Election Committee. In terms of the formation of the Nomination Committee, it should remain simple but independent. A committee of 3-5 would be sufficient. Board members whose term is not ending upon the upcoming AGM are tasked to seat the Nomination Committee from individuals with considerable experience and knowledge about DotAsia’s work especially in the Asia Pacific Internet community.

The Nomination Committee will be responsible for:

- Identifying and recommending candidates for appointment
- Confirming candidates as eligible nominees for Board Elections
- Establishing, updating, and enforcing a set of Eligibility Assessment Rules and an Elections Code of Conduct

The Nomination Committee will be delegated with the powers to:

- Determine the eligibility of a candidate based on the DotAsia Articles of Association
- Determine the eligibility of a candidate based on the Eligibility Assessment Rules and the Elections Code of Conduct
- Confirming candidates as eligible nominees for Board Elections
- Establishing, updating, and enforcing a set of Eligibility Assessment Rules and an Elections Code of Conduct

The following are proposed eligibility criteria to be incorporated into the DotAsia AA:

The following persons are not eligible to be nominated as a candidate for the DotAsia Board:

- DotAsia employees, unless that person agrees as a condition of their nomination to resign from such position if elected to the board;
- Persons who have been found to have violated the DotAsia Code of Conduct and is sanctioned with disciplinary such as being restricted from participation in the Company's activities;
- Persons who, if elected, would detrimentally impact the DotAsia’s ability or capacity to fulfil its objects and legal obligations; or
- Persons who are currently involved in litigation with DotAsia or who represent a company, organisation, or related body corporate of such, which is currently involved in litigation with the DotAsia;

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Based on the feedback received from Members, it is suggested that all members of the Nomination Committee be independent, and will be appointed annually, with the decision about who to appoint being made by Directors not involved in that particular election. Furthermore, while the Nomination Committee is appointed annually, it is expected that Committee members serve for multiple years for continuity, knowledge and experience on the Nomination Committee, and that at any one time, no more than 1 person from the same organization shall serve on the Nomination Committee.

3.4 Transition Considerations

In considering the transition of the Board composition (section 3.1) as well as rotation and term (section 3.2) to the proposals above, the following 3-year transitional period is proposed.

Year 1:

- 2 seats nominated and elected by Sponsor Members for a 3-year term
- 2 seats nominated and elected by Co-Sponsor Members
 - One being for a 3-year term
 - Another being for a 2-year term (by count of votes)
- 1 seat nominated by NomCom and appointed by the Board for a 3-year term

This would result in a Board after the Year 1 transitional elections composed with 4 (remaining Directors) + 2 (newly elected or re-elected Directors) = 6 Directors having been elected by the Sponsor Members; as well as, 1 (remaining Director) + 2 (newly elected Directors) = 3 Directors having been elected by the Co-Sponsor Members; and, 1 Director appointed by the Board.

Year 2:

- 2 seats nominated and elected by Sponsor Members for a 3-year term
- 1 seat nominated and elected by Co-Sponsor Members for a 3-year term
- 0 seats nominated by NomCom and appointed by the Board

Note that this would mean that for this year there would be only 9 Directors on the Board (including the CEO) and that 1 of which would have been appointed by the Board, along with 4 Directors having been elected from the Sponsor Members and 3 Directors having been elected from the Co-Sponsor Members.

Year 3:

- 2 seats nominated and elected by Sponsor Members for a 3-year term
- 1 seat nominated and elected by Co-Sponsor Members for a 3-year term
- 0 seats nominated by NomCom and appointed by the Board

This would complete the transition from the current to the new composition, rotation and term period proposed in sections 3.1 & 3.2 above in that at the conclusion of the Board Elections in Year 4, all transitional directors would have completed their terms and a consistent cycle going forward would begin.

The following chart summarizes the transition process:

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Current	Year 0	Transition Begins			Transition Complete			(Term limit begins to apply -- previous/current terms not counted)				
		2023	Year 1 2024	Year 2 2025	Year 3 2026	Year 4 2027	Year 5 2028	Year 6 2029				
SP seat 1	(vacant)	Term Ends	(3 yr term) -- no term limit			Term Ends	(3 yr term) -- 1st of 3 consecutive term limit			Term Ends	(3 yr term) -- 1st of 3 consecutive term limit	
SP seat 2	(vacant)	Term Ends	(3 yr term) -- no term limit			Term Ends	(3 yr term) -- 1st of 3 consecutive term limit			Term Ends	(3 yr term) -- 1st of 3 consecutive term limit	
SP seat 3	(vacant)	Term Ends			(3 yr term) -- no term limit				Term Ends	(3 yr term) -- 1st of 3 consecutive term limit	Term Ends	(3 yr term) -- 1st of 3 consecutive term limit
SP seat 4	current	Term Ends			(3 yr term) -- no term limit				Term Ends	(3 yr term) -- 1st of 3 consecutive term limit	Term Ends	(3 yr term) -- 1st of 3 consecutive term limit
SP seat 5	current		Term Ends	(3 yr term) -- no term limit				Term Ends	(3 yr term) -- 1st of 3 consecutive term limit			
SP seat 6	current		Term Ends	(3 yr term) -- no term limit				Term Ends	(3 yr term) -- 1st of 3 consecutive term limit			
SP seat 7	current		Term Ends									
SP seat 8	current		Term Ends									
CSP seat 1	current	Term Ends	(2 yr term) -- no term limit		Term Ends	(3 yr term) -- no term limit			Term Ends	(3 yr term) -- 1st of 3 consecutive term limit		
CSP seat 2	current		Term Ends	(3 yr term) -- no term limit				Term Ends	(3 yr term) -- 1st of 3 consecutive term limit			
CSP seat 3			(3 yr term) -- no term limit			Term Ends	(3 yr term) -- 1st of 3 consecutive term limit			Term Ends	(3 yr term) -- 1st of 3 consecutive term limit	
NC seat			(3 yr term) -- no term limit			Term Ends	(3 yr term) -- 1st of 3 consecutive term limit			Term Ends	(3 yr term) -- 1st of 3 consecutive term limit	
CEO												
Sponsor Member Seats (SP):		SP 6		SP 4		SP 6		SP 6	...			
Co-Sponsor Mem. Seats (CSP):		CSP 3		CSP 3		CSP 3		CSP 3	...			
NomCom Seat (NC):		NC 1		NC 1		NC 1		NC 1	...			
Chief Executive Officer:		CEO 1		CEO 1		CEO 1		CEO 1	...			
Total Directors Serving:		Total 11		Total 9		Total 11		Total 11	...			

4. Members Adoption Timeline

The following is a brief timeline for DotAsia Members' adoption of the updated DotAsia Articles of Association:

- Sep 19 (Tue) 1st Draft of Proposed Amendments package (COMPLETED)
- Oct 31 (Tue) Close of Member feedback survey (COMPLETED)
- Dec 28 (Thu) 2nd Draft of Proposed Amendments package (COMPLETED)
- Jan 26 (Fri) Close of Member feedback for 2nd Draft (COMPLETED)
- Feb 2 (Fri) Final Proposed Amendments package for Member Consideration
- Feb 2 (Fri) Call for Sponsor Member General Meeting
Call for Co-Sponsor Member General Meeting
Call for DotAsia EGM (21 days before EGM)
- Feb 24 (Sat) Sponsor Member General Meeting
Co-Sponsor Member General Meeting
- Feb 26 (Mon) DotAsia EGM @APRICOT (Approval of Articles Amendments)

Note that 3 General Meetings will be held, one specifically for Sponsor Members, one specifically for Co-Sponsor Members, and also a full DotAsia EGM at APRICOT 2024 immediately following the AP* Retreat program.