

The Incorporation of Pacific Islands Internet Exchange

21 November 2024

Declaration and Disclaimer

This Report has been prepared by Bradley Botting for the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), in support of the Asia-Pacific Information Superhighway Action Plan 2022-2026. This Report is intended as a practical guide should any similar organisational structure be contemplated by other Asia-Pacific developing countries.

In preparing this Report, the author has relied primarily on information from publicly available sources, the author's actual experience in relation to the incorporation of the Pacific Islands Internet Exchange as an incorporated society in New Zealand and the author's own legal knowledge and expertise. While reasonable measures have been taken to confirm, verify and validate external sources, the author provides no warranty, express or implied, regarding any information referenced within.

The findings and recommendations of the study should not be reported as representing the views of the United Nations. The views expressed herein are those of the author. The study has been issued without formal editing, and the designations employed and material presented do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Furthermore, any remarks in this Report concerning difficulties or delays in completing the incorporation of the Society are not intended as a criticism of any other party. These comments simply reflect the challenges and issues actually faced in relation to completing the incorporation of the Society.

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Abbreviations

Act	Incorporated Societies Act 2022
Constitution	the constitution of the Society
ESCAP	Economic and Social Commission for Asia and the Pacific
ICT	Information and Communication Technology
IXP	Internet Exchange Point
Pacific IXP Taskforce	The working group A working group, comprised of representatives from each of Fiji, New Zealand and Samoa, established under the co-ordination of ESCAP to establish the Society
Registrar	The New Zealand Registrar of Incorporated Societies
Regulations	Incorporated Societies Regulations 2023
Society	Pacific Islands Internet Exchange Incorporated
South Pacific region	the geographic area generally located south from Hawaii, north from (and including) New Zealand, east of Australia and west of (and including) Tahiti unless the context requires otherwise.
Study	A legal assessment study dated in November 2023 prepared by the author for ESCAP as part of the Pacific IXP project.
UN	United Nations

Interpretation

Unless otherwise indicated, a reference to any legislation in this study is a reference to New Zealand legislation.

1. Introduction

- 1.1 This Report has been prepared to support an initiative of ESCAP on IXP in support of the implementation of the Asia-Pacific Information Superhighway Action Plan 2022-2026 (“APIS Initiative”).
- 1.2 An element of the APIS Initiative has been the establishment of a new incorporated society in New Zealand, the Society, to own and operate a multi-country IXP in the South Pacific region.
- 1.3 This Report provides an overview of the actions taken by the Pacific IXP Taskforce to establish the Society, a summary of the contents of the Constitution, the practical and legal steps taken to register the Society in New Zealand and outlines some of the challenges encountered in completing the incorporation of the Society.
- 1.4 This Report is intended as a practical resource should any similar organisational structure be contemplated by other developing countries in the Asia-Pacific region.

2. Background

- 2.1 A key element of the APIS initiative is a proposal for the establishment of one or more IXPs to serve the South Pacific Islands community by addressing the present limited means of interconnection for Internet networks in the South Pacific region. The primary purpose of such IXPs are to provide users in South Pacific Island nations with a low-latency connection point to interconnect with other member networks whilst minimising the number of subsea ‘cable hops’ required to connect.
- 2.2 An appropriate legal structure was necessary to own and operate the IXP hardware and associated infrastructure assets in order to provide a distributed multi-country IXP in the South Pacific region, starting with IXP nodes located in Fiji, Samoa and New Zealand.
- 2.3 The Pacific IXP Taskforce determined that the most appropriate structure for such an entity was an incorporated society.
- 2.4 Following the Pacific IXP Taskforce’s decision on the appropriate structure, a Legal Assessment Study dated in November 2023 was prepared and circulated in order to outline the steps required to establish an incorporated society in New Zealand and any regulatory hurdles for such an entity to operate in each of New Zealand, Fiji and Samoa.

3. Why an Incorporated Society?

- 3.1 An incorporated society can be a suitable structure for organisations that exist for a purpose other than making a profit for the society’s members and that are likely to be operating for an extended period of time. Incorporated societies may also operate internationally and can therefore also be an appropriate choice where activities or operations are required across two

or more countries.

3.2 An incorporated society provides the following benefits:

- (a) The society has its own legal identity, separate to that of its members and officers. This separate legal identity provides a number of benefits including: perpetual succession (whilst members and officers may change over time, the society's identity remains constant); the ability for the society to hold assets and sign contracts in its own name; and limited liability for the society's members;
- (b) A society reflects democratic principles. Members have regular opportunities to participate in key decision-making via general meetings and, as the society's controlling persons, its officers, are generally elected by the members and serve a fixed term, there is direct accountability to the society's members; and
- (c) The purposes of the society and the way the society operates and interacts with its members, officers and third-parties are documented in a set of rules (the constitution), providing a high degree of certainty and consistency in the way the society operates.

4. Establishing the Society

The Legal Landscape

- 4.1 The current legislation in New Zealand covering incorporated societies is the Act and the Regulations. This legislation is relatively modern, having come into force in October 2023.¹
- 4.2 The Act and the Regulations are administered by the New Zealand Ministry of Business, Innovation and Employment (MBIE). MBIE has appointed a Registrar, who is responsible for various regulatory functions under the Act and Regulations, including:
 - maintaining a public register of New Zealand incorporated societies; and
 - receiving and processing documents incorporated societies are required to file, such as applications for incorporation, notification of changes to the registered office address, changes in officers and contact person details, alterations to a society's rules, annual financial statements and annual returns.²

The pre-requisites for incorporation of a Society

- 4.3 There are six prerequisites a society must meet to qualify for incorporation under the Act. These are:
 - a name that complies with the requirements in the Act;

¹ Incorporated Societies Regulations 2023. Available at <https://www.legislation.govt.nz/>.

² See <https://is-register.companiesoffice.govt.nz/about/the-role-of-the-registrar/>.

- members who meet or exceed the minimum required number of members;
- at least three officers;
- at least one contact person who is ordinarily resident in New Zealand;
- a registered office in New Zealand; and
- a constitution that complies with the requirements in the Act.

4.4 The Study provided an in-depth look at these prerequisites. This Report focuses only on (f), the constitution.

The Society's Constitution

4.5 To incorporate, a society must have a constitution which details how the society will operate. The constitution of a society is binding, between the society and each member, between the members and on each officer of the society.

4.6 To comply with the Act, the constitution must include the following:

- the name and purposes of the society;
- how a person becomes and ceases to be a member of the society;
- arrangements for keeping the society's register of members up to date;
- the composition, roles, functions, powers, and procedures of the committee of the society;
- how the society's contact person or persons will be elected or appointed;
- how the society will control and manage its finances;
- the method by which the constitution may be amended;
- procedures for resolving disputes, and including provision for how a complaint may be made;
- arrangements and requirements for general meetings of the members; and
- the nomination of a not-for-profit entity, or a class or description of not-for-profit entities, to which any surplus assets of the society should be distributed on liquidation of the society or when the society is wound up.³

4.7 Under the Act, membership of the society does not give a member any rights in the property of the society and the constitution must not give members rights or interests in the society's property.⁴ In addition to the required matters summarised in paragraph 4.6, the constitution can contain any other matters not inconsistent with the Act or other legislation.⁵

5. The Constitution

5.1 A draft of a proposed constitution for the Society was presented to members of the Pacific IXP Taskforce at a meeting in Suva, Fiji on 28 November 2023.

³ Incorporated Societies Act 2022, Section 26.

⁴ Incorporated Societies Act 2022, Section 27 which gives effect to the prohibition in Section 77.

⁵ Incorporated Societies Act 2022, Section 28.

- 5.2 Subsequent to that meeting, a number of minor refinements were made to the draft Constitution, including to reflect a desire that the initial 'Foundation Members' from Samoa and Fiji would each have the ability to nominate a successor organisation as foundation member in their place.
- 5.3 A final version of the Constitution was circulated and approved by the initial members of the Society at a virtual Pacific IXP Taskforce meeting on 24 January 2024. A copy of the approved and, as registered, Constitution is annexed to this Report as Appendix 1.
- 5.4 The main provisions of the Constitution are summarised as follows:
- (a) **Name:** The name of the Society, being the 'Pacific Islands Internet Exchange Incorporated' (clause 1).
- (b) **Purposes:** The Purposes of the Society (clause 3.2), being to:
- support and protect the interests of the Internet community throughout the South Pacific region;
 - assist the operation and expansion of Internet usage within the South Pacific region including but not limited to Internet based services;
 - promote education and informed discussions on matters relating to the Internet;
 - support, encourage and advise on the development and use of online services and related innovations;
 - develop and maintain valuable links with similar organisations within the Region and globally for the benefit of Members; and
 - offer services to Members and the general public to assist in fulfilling the aforementioned stated objects.
- (c) **Registered Office and Contact Person:** The Society's registered office and contact person(s) shall be as determined by the committee from time to time (clause 5). The Act requires that the:
- registered office of the Society be a physical address in New Zealand; and
 - Society have at least one and up to three contact person(s) who are ordinarily resident in New Zealand.
- (d) **Members:** Three initial classes of members (clause 6.1), being:
- Full Members (clause 6.3) who have the right to speak and vote at general meetings of the Society and the right to connect to any IXP operated by the Society;
 - Affiliate Members (clause 6.4) who do not have any speaking or voting rights but who may, with the approval of the Committee, connect to any IXP operated by the Society; and

- Three ‘Foundation Members’ (clause 6.5), one from each of New Zealand, Fiji and Samoa as follows:
 - from New Zealand, New Zealand Internet Exchange Incorporated, an existing society incorporated in New Zealand;
 - from Fiji, the Ministry of Trade, Cooperatives, Small and Medium Enterprises, and Communications of the Government of Fiji; and
 - from Samoa, the Ministry of Communications and Information Technology of the Government of Samoa.

Foundation Members have all of the rights and privileges of Full Members of the Society and are also given the following additional powers and privileges:

- a right for each Foundation Member to appoint and remove one officer to the committee of the Society (clause 8.1(a));
- the right to be represented by at least one of their number at any general meetings of the Society in order for there to be a quorum of the members (clause 7.4);
- a requirement that a majority of the Foundation Members approve any proposed amendments to the Constitution (clause 16.1); and
- a requirement that that a majority of the Foundation Members approve any resolution to wind up the Society (clause 17.3).

It was considered important to ensure that the committee of the Society included representation from key stakeholders from each of the three jurisdictions within which it is proposed that the Society will initially operate. The initial Foundation Members from Fiji and Samoa also have the power to appoint an appropriate successor organisation from that same country to be a Foundation Member in its place.

- (e) **Becoming and ceasing to be a Member:** The procedure for becoming a Member of the Society, which is by an application in the form specified by the Society’s committee (clause 6.8) and how a member ceases to be a member, on death or resignation (clause 6.11) or has their membership terminated by the committee, including for payment defaults and other breaches of the member’s obligations as a member under the Constitution (clause 6.12).
- (f) **Register of Members:** A requirement that the Society have and maintain an up-to-date register of its members, which includes the information the Society is required to hold under the Act (clause 6.15). At the time of writing this Report, that required information is:
 - The name and last known contact details of each member; and
 - The date on which that person become a member.
- (g) **Appointment of Committee:** The Society’s committee will consist of at least three and

no more than seven persons (clause 8.1). Officers not appointed by the Foundation Members are elected by the Members at a general meeting of the Society and serve a term of three years (clause 8.6). Any vacancy in elected officers may be filled by the committee itself but officers so appointed by the Committee serve only until the next annual general meeting of the Society (clauses 8.1(c) and 8.6(c)). If there is a complaint concerning an officer, that officer may be removed from the committee by an ordinary vote of either the committee itself or the members of the Society but only following a procedure dealing with the complaint that complies with the rules of natural justice (clause 8.7).

- (h) **Powers and Procedures of Committee:** The operation and affairs of the Society are managed by, or under the direction of, the committee. The committee is given wide powers to operate the Society, including:
- The employment of staff and passing of bylaws (clause 9.1);
 - Forming and terminating sub-committees (clause 9.3);
 - Establishing and operating bank accounts for the Society (clause 12.2);
 - Keeping proper accounting records and establishing and maintaining satisfactory systems for the control of the Society's accounts (clause 12.3);
- (i) **Duties of Officers:** Officers of the Society, the committee members, are required to act in good faith and in the best interests of the Society, with reasonable care and diligence and must exercise their powers for a proper purpose (clause 9.2). Officers of the Society also have an obligation to promptly disclose to the Society, the nature and extent of any conflicts of interest the officer may have.

The Society is required to keep and maintain a register of conflicts of interest that have been disclosed by its officers (clause 10). A summary of the disclosures made in this interests register must be presented by the Society's committee to members at each annual general meeting.

- (j) **Members' Meetings:** The Society is required to hold an annual general meeting of the Members no later than six-months from the end of the Society's financial year and not later than 15 months from the date of the previous annual general meeting (clause 7.2(a)) and section 84 of the Act. The initial annual general meeting of the Society must be held within 18 months of the Society's incorporation.

In addition to the annual general meeting, two members of the Committee or at least five members of the Society may call a special meeting of members to discuss any particular business which arises during the year and which needs to be considered by members on an expedited basis.

Meetings may be held in person, by using an electronic means of meeting (such as Zoom, Teams or Google Meet) or by any combination of those methods (clause 7.5).

The quorum requirement for any members' meeting is a minimum of 15 Full Members or one-third of the Full Members of the Society (which is the lesser) including in that number, at least one of the Foundation Members (clause 7.4).

- (k) **Amendments to the Constitution:** The Constitution may be amended by a resolution of at least two-thirds of the Full Members and a majority of the Foundation Members present and voting at a general meeting (clause 16.1).
- (l) **Procedures for dealing with complaints and disputes:** The Constitution must have or refer to procedures, consistent with the rules of natural justice, for resolving disputes between any of the Society, its officers and members (section 39 of the Act). Schedule 2 of the Act provides for a set of optional default resolution procedures which, if adopted by a society, are deemed to comply with the rules of natural justice. Clause 15 of the Constitution adopts the dispute resolution procedures in Schedule 2 of the Act.
- (m) **Winding up of the Society:** Winding up the Society requires two separate members' meetings and approval by a majority of the members and the Foundation Members at each of those meetings (clause 17.3). On any winding up, the surplus assets of the Society are to be vested in one or more non-for-profit entities operating within the South Pacific region as determined by the members (clause 17.4).

6. Steps to complete Incorporation

- 6.1 Once a proposed society has the requisite number of members to incorporate (being a minimum of ten persons – with certain body corporates who are intending members being counted as three persons) and those members have agreed on the form and contents of a Constitution, the members can then proceed with the steps required to actually incorporate the society under the Act.
- 6.2 In order to incorporate a new society under the Act, the following steps must be taken. Steps 2 – 4 do not need to be distinct sequential steps and may be carried out at the same time as, or in connection with, the general meeting in Step 3.

Step 1: Check Society Name is Available

- 6.3 The name of the proposed society must be available for registration and must meet the requirements of the Act (section 11(1) of the Act). In particular, the name of a new society must not be identical or almost identical to the name of any existing society. A name availability check should therefore be undertaken prior to finalising the name of the proposed society and the society's constitution.
- 6.4 A name availability check can be conducted at no cost on the website operated by the Registrar

for this purpose⁶. A New Zealand Government 'RealMe' login and online services account for the Registrar are required in order to submit an online application. Realme is a secure login service that allows persons to access certain online services across multiple New Zealand Government departments using a single user account and password⁷.

Step 2: Hold Inaugural General Meeting

6.5 Prior to making an application for incorporation, a society will need to hold an inaugural meeting of its intended members. At this inaugural meeting, these initial members must:

- resolve to incorporate as a society under the Act;
- approve the new society's constitution; and
- resolve or determine:
 - who the initial officers of the new society will be (a minimum of three officers are required as noted above);
 - who the society's initial contact person(s) will be; and
 - the society's registered office and addresses for communications with the society.

Step 3: Obtain Member Consents

6.6 The initial members of the society need to give their written consent to becoming a member. Where a member is itself a body corporate such as an incorporated company or some other body of persons, that member should appoint a natural person to act as its authorised representative for the purpose of attending and voting at meetings of the Society. There is no mandatory format for member consents. An example member consent form, used for the incorporation of the Society, is provided in Appendix 2.

Step 4: Obtain Consent and Certificate of Officers

6.7 Each initial officer of the society needs to complete and sign the officer consent and certificate in the form prescribed by the Registrar. A copy of the current prescribed form is contained in Appendix 3.

Step 5: Submit Application for Incorporation

6.8 Once Steps 1 -4 are completed, the application to incorporate the society can be submitted.

6.9 The application for incorporation must provide the information, be in the manner and include the fee prescribed by the Regulations.⁸ The information required in the Regulations is:

- the name of the society;
- the physical address of the proposed registered office;
- an address for communication (if different to the registered office address);

⁶ <https://is-register.companiesoffice.govt.nz>.

⁷ See <https://www.govt.nz/organisations/realme> for more information.

⁸ Incorporated Societies Act 2022, Section 9; Incorporated Societies Regulations 2023, Part 2, Sections 5 to 8.

- an e-mail address for communication;
- the balance date (end of financial year) of the society;
- the names and physical addresses of the proposed officers (a minimum of three);
- confirmation a named officer (or the agent submitting the application on behalf of the society) considers the number of persons applying to incorporate the society is 10 or more; and
- confirmation a named officer (or agent submitting the application on behalf of the society) considers the proposed constitution complies with the Act.

6.10 The application for incorporation of a new society needs to be completed online on the New Zealand Incorporated Societies website.⁹ As with the name availability search in Step 1 above, a New Zealand Government RealMe login and online services account are required in order to submit the application for incorporation. An alternative manual, paper-based application process may be made available in the future but, as at the date of this Report, no manual paper-based application form or process is available.

6.11 The application fee for incorporation of a society is modest, at the date of this Report being NZD\$88.89 plus GST.¹⁰

Step 6: Registrar Approval

6.12 Once the application for incorporated is submitted it is reviewed by the Registrar to confirm the application meets the requirements of the Act. The Registrar states that it aims to complete its review of an application within three working days from the date of submission¹¹ and that is broadly in line with our experience. In the case of the Society, the application for incorporation was submitted on 12 June and the Registrar approved incorporation the Society on 17 June 2024, a period of 4 working days.

6.13 On approval, the Society is added to the Incorporated Societies Register and a Certificate of Incorporation is emailed to the person who completed the application and to the Society's email address for communication.

6.14 Once incorporated, the Society will have its own separate legal identity and can commence activities in its own name.

7. Challenges to completing Incorporation

7.1 The Constitution was approved and the initial members agreed to proceed with incorporation of the Society at the end of January 2024. The application for incorporation was not able to

⁹ See <https://is-register.companiesoffice.govt.nz/help-centre/starting-an-incorporated-society/applying-to-incorporate-a-society/>.

¹⁰ New Zealand goods and services tax is charged at 15%. The application fee is therefore NZD\$103.40 inclusive of GST.

¹¹ Ibid at note 9.

be submitted until 12 June 2024 however, a delay of almost five months.

- 7.2 The delay in submitting the application for incorporation of the Society was due to several factors. The most prominent of these factors were delays in obtaining necessary information from certain members and resistance to providing necessary information for required 'know your customer' anti-money laundering checks. These factors are discussed further in the following paragraphs.

Delays

- 7.3 Two of the Foundation Members of the Society are the Ministry of Trade, Cooperatives, Small and Medium Enterprises, and Communications of the Government of Fiji ("Fijian Foundation Member") and the Ministry of Communications and Information Technology of the Government of Samoa ("Samoa Foundation Member").
- 7.4 As at the time of the inaugural members' meeting in January 2024, the Fijian Foundation Member was still to obtain certain internal clearances and approvals and to confirm the identity of its 'authorised representative' and its desired officer appointee. Because of various staffing and portfolio changes at the Ministry it was not until early May that the identity of those persons was confirmed and the necessary consent and certificate form could then be prepared and provided to the relevant officer for execution.

Customer Due Diligence requirements

- 7.5 The incorporation of the Society and the provision of a registered office for the Society are both considered 'captured activities' under the New Zealand Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("the AML Act").
- 7.6 Where a professional who is subject to the AML Act, such as an accountant or lawyer, is providing services related to these captured activities, it is necessary for the professional to conduct customer due diligence' on the Society and its controlling persons. As a lawyer enrolled to practice in New Zealand, it was therefore necessary for the author to undertake initial customer due diligence in accordance with the requirements of the AML Act.
- 7.7 The persons considered to be in control of an incorporated society are generally the officers of that Society. Once the identity of all of the proposed officers was finally confirmed, it was therefore necessary to complete customer due diligence by verifying the identity and address of each of those persons.
- 7.8 Usually, this verification process is undertaken either:
- a. in person, by meeting the officer and sighting original photo ID and proof of address;
or
 - b. remotely, using one of any number of electronic verification providers who have access relevant government, utility and credit provider databases to verify identity

and address information.

- 7.9 In the case of the Society, it was unfortunate that none of the proposed officers had attended the in-person Pacific IX Taskforce meeting in Suva, Fiji in November 2023, so verification of the officers was not able to be completed at that time. With the author being in New Zealand and several of the intended officers of the Society being based in the Pacific Islands, verification in person was not practical. None of the electronic verification providers available to the author were able to electronically verify the identity and address of persons holding Fijian or Samoan identity documents.
- 7.10 The only available option was therefore to have the officers from Samoa and Fiji meet with a local notary public, a Court official, a New Zealand consulate officer or other authorised person to undertake the required identity and address verification. The original of those verified documents then needed to be sent to New Zealand. That process took more than a month to complete.
- 7.11 Whilst lawyers, accountants and many other professionals in New Zealand are subject to the Anti-Money Laundering laws, private individuals are not. If a society was therefore to have one of its New Zealand members or officers complete the incorporation process and to have the society's registered office at the address of that member, the customer due diligence requirements of the AML Act would not need to be completed in order to incorporate the society.

Resistance to providing Information

- 7.12 The author also experienced some resistance from certain officers to providing the personal information necessary to undertake the identity and address verification process.
- 7.13 This may have been because of unfamiliarity with the requirements of the AML Act or due to understandable concerns about providing personal information to a relatively unknown person in another country.
- 7.14 For any future similar incorporations, these potential roadblocks could perhaps be minimised by providing intending officers with a more extensive 'briefing pack' that sets out the initial steps and formalities officers need to complete to be appointed, including the necessary customer due diligence requirements.

Bank Account and New Zealand IRD Number

- 7.15 Similar customer due diligence procedures also need to be completed in order to open a bank account in New Zealand and to apply for a New Zealand Inland Revenue Department ("IRD") tax number. If customer due diligence did not need to be carried out for incorporation itself, it will nevertheless need to be completed in order for the Society to take these further initial steps prior to commencing operations.

7.16 If the society has opened and holds an active New Zealand bank account, the New Zealand IRD will accept evidence of that bank account as confirmation that initial customer due diligence in respect of the Society has been carried out by the bank. If a bank account has not yet been opened, IRD will instead accept a letter or certification from an entity that is subject to the AML Act (such as the Society's lawyer or accountant) confirming that customer due diligence has been carried out in respect of the Society.

Registered Office and Contact Person

7.17 As noted earlier in this Report, it is a requirement of the Act that the Society have at least one contact person located in New Zealand (the Society may have up to three such contact persons) and have a registered office at a physical address in New Zealand.

7.18 Most societies will not initially want the expense of purchasing or leasing premises in New Zealand for a registered office. The most practical option is therefore for the Society to use the business premises of the Society's accountant, lawyer or, if appropriate, a New Zealand resident member or officer.

8. Conclusion

8.1 An incorporated society structure can be a suitable choice for organisations that exist for a purpose other than making a profit and that are likely to be operating for an extended period of time. An incorporated society structure provides: a fair degree of flexibility in the rights and powers of members; opportunities for members to have regular input via general meetings; and direct accountability from the society's officers to members. Incorporated societies may operate internationally and can therefore be appropriate where activities or operations are required across two or more countries.

8.2 The steps to complete the incorporation of the Society were relatively straight forward and are clearly prescribed in the Act and Regulations. Once the required prerequisites have been met, incorporation can be completed relatively quickly and the Registrar processes applications in a timely manner. The Register's website is also a helpful source of information about the incorporation process.

8.3 In the case of the Society, some delays were encountered as a consequence of certain members having personnel changes and other competing priorities. Some delays were also encountered in relation to obtaining the information for and completing customer due diligence checks that will, in most cases, be required for incorporation of a society in New Zealand.

8.4 Generally speaking, these issues were relatively minor and were able to be resolved with some persistence and the provision of further information and explanation. Some of the delays experienced in relation to the Society may be avoided, or at least reduced, by provision of a more comprehensive briefing pack for intending members and officers.

Appendices

Appendix 1:

Constitution of Pacific Islands Internet Exchange Incorporated

Appendix 2:

New member consent form

Appendix 3:

Consent and certificate of officer (IS22-CCO) form – Version May 2024

Appendix 1

Constitution of Pacific Islands Internet Exchange Incorporated

(see overleaf)



PacIXP Society Constitution

1. NAME

The name of the Society shall be the “Pacific Islands Internet Exchange Incorporated” (“the Society”). The Society shall have the ability to nominate a trading name suitable for its purposes as resolved by the Committee as it deems fit.

2. INTERPRETATION

2.1. **Definitions:** In this Constitution unless a contrary interpretation appears:

- (a) **Act:** means the Incorporated Societies Act 2022.
- (b) **Affiliate Member:** means any member of the Society as constituted in Rule 6.4.
- (c) **Annual General Meeting:** means the annual meeting of the Society.
- (d) **Authorised Representative:** means the representative of a non-natural person Member authorised to act on behalf of the relevant Member in accordance with Rule 6.9.
- (e) **Chairperson:** means the person elected by the Committee as chairperson of the Society.
- (f) **Clear Day:** means all days excluding: i. weekends; and ii. national public holidays in the country in which the Society has its registered office.
- (g) **Committee:** means the management committee of the Society as constituted in Rule 8.
- (h) **Committee Meeting:** means the meetings of the Committee.
- (i) **Committee Member:** means a member of the Committee, including the Chairperson, Secretary and Treasurer.
- (j) **Constitution:** means the provisions and rules contained in this constitution of the Society.
- (k) **Foundation Member:** means any one of:
 - (i) the Initial Fiji Representative or, upon a nomination by the Initial Fiji Representative in accordance with Rule 6.6 becoming effective, the New Foundation Member so appointed;
 - (ii) the Initial Samoa Representative or, upon a nomination by the Initial Samoa Representative in accordance with Rule 6.6 becoming effective, the New Foundation Member so appointed; and
 - (iii) New Zealand Internet Exchange Incorporated;and “**Foundation Members**” shall mean all of them. A Foundation Member shall not be construed to include a member, agent or other representative of a Foundation Member.



PacIXP Society Constitution

- (l) **Full Member:** means any member of the Society as constituted in Rule 6.3.
- (m) **Interested Member:** means a Committee Member who is interested in a matter for any of the reasons set out in the Act.
- (n) **Interests Register:** means the register of interests of Committee Members, as referred to in Rule 10.3.
- (o) **General Meeting:** means either an Annual General Meeting or a Special General Meeting.
- (p) **Initial Fiji Representative:** means the Ministry of Trade, Cooperatives, Small and Medium Enterprises, and Communications of the Government of Fiji.
- (q) **Initial Samoa Representative:** means the Ministry of Communications and Information Technology of the Government of Samoa.
- (r) **Member:** means any member of the Society as specified in Rule 6.
- (s) **New Foundation Member:** means a person who replaces either the Initial Fiji Representative or the Initial Samoa Representative as a Foundation Member in accordance with Rule 6.6.
- (t) **Patron:** means the person (if any) appointed to that position by the Committee from time to time pursuant to Rule 9.1(e).
- (u) **Region:** means the geographic area generally located south from Hawaii, north from (and including) New Zealand, east of Australia and west of (and including) Tahiti unless the context requires otherwise.
- (v) **Resolution:** Unless otherwise specified in this Constitution, shall mean, in respect of a General Meeting, any resolution passed at a General Meeting by a majority of the Members attending in person, by electronic means, or by proxy.
- (w) **Secretary:** means the person elected by the Committee as secretary of the Society.
- (x) **Society:** means Pacific Islands Internet Exchange Incorporated.
- (y) **Special General Meeting:** means a meeting of the Society convened in accordance with Rule 7.3.
- (z) **Treasurer:** means the person elected by the Committee as treasurer of the Society.

2.2 Interpretation: Unless the context otherwise requires, in this Constitution:

- (a) Headings are inserted for convenience only and shall be ignored in construing any matter.



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- (b) References to a person shall include a natural person, company, association or other entity, whether incorporated or not and whether or not having a separate legal personality and includes that persons successors, assigns, executors and administrators.
- (c) Words denoting individuals shall include corporations and vice versa.
- (d) References to any legislation or to any provision of legislation shall be deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted in the relevant jurisdiction, and further, unless the context requires otherwise, shall also include any statutory instruments or regulations issued under such legislation or provision. Unless otherwise specified, references to any legislation are to New Zealand legislation.
- (e) The words 'includes' or 'including' shall not imply any limitation.

3. PURPOSES AND POWERS

- 3.1. **Background:** The Society is a not-for-profit common interest society which is established to maintain and extend the interests of the professional internet community throughout the Region. The underlying principles of the Society are to widely promote the internet, its applications and associated technologies, as an essential attribute to the business and not-for-profit sectors, while also advancing internet services and benefits to private citizens in the community.
- 3.2. **Purposes:** The primary purposes of the Society are to:
 - (a) support and protect the interests of the Internet community throughout the Region;
 - (b) assist the operation and expansion of Internet usage within the Region including but not limited to Internet based services;
 - (c) promote education and informed discussions on matters relating to the Internet;
 - (d) support, encourage and advise on the development and use of online services and related innovations;
 - (e) develop and maintain valuable links with similar organisations within the Region and globally for the benefit of Members; and
 - (f) offer services to Members and the general public to assist in fulfilling the aforementioned stated objects.
- 3.3. **Powers:** The Society shall achieve the aforementioned purposes by exercising its full legal powers permitted under law, including to:
 - (a) establish, operate and administer at least one Internet exchange point spanning multiple nations within the Region;



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- (b) operate and administer one or more network fabrics to interconnect and/or extend Internet Exchange points within the Region;
- (c) determine, implement and enforce protocols, policies and rules for the operation and use of any Internet exchange point or network fabric operated by the Society;
- (d) purchase, lease, hire, or otherwise acquire and hold real and personal property, rights, and privileges;
- (e) construct, maintain and alter any buildings, premises or facilities and carry out works it considers necessary or desirable for the advancement or improvement of such buildings, premises or facilities;
- (f) sell, lease, mortgage, charge or otherwise dispose of any property of the Society and to grant such rights and privileges of such property as it considers appropriate;
- (g) control and raise money, including to borrow, invest, loan or advance monies and to secure the payment of such by way of mortgage, or charge over all or part of any of its real and personal property provided that interest paid on such funds borrowed or raised must not exceed the current market rate, and funds advanced or loaned must be at no lesser than the current market rate, unless the recipient of such funds loaned or advanced has objects the same as or similar to the objects of the Society;
- (h) determine, raise and receive money by subscriptions, fees, levies, sponsorship or otherwise;
- (i) engage people and organisations to work for and with the Society, provided that the payment for such services shall not exceed the market rate;
- (j) if so determined by the Committee, to be a member of the Asia Pacific Internet Exchange Association or any successor or similar organisation;
- (k) determine who are its Members in accordance with this Constitution;
- (l) establish and maintain the Committee, sub-committees, and other groups and to delegate its powers and functions to such groups;
- (m) establish, maintain, and have an interest in corporate or other entities to carry on and conduct any part of the affairs of the Society and for that purpose, to utilise any of the assets of the Society;
- (n) produce, develop, create, licence and otherwise exploit, use, and protect the Intellectual Property of the Society; and
- (o) purchase or otherwise acquire all or any part of the property, assets and liabilities of any one or more companies, institutions, incorporated societies or organisations whose activities or objects are similar to those of the Society, or with which the Society is authorised to amalgamate or merge, or generally for any purpose designed to benefit the Society; and do any other acts or things which further its objects.



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The powers specified in this Rule 3.3 shall not limit the rights and powers of the Society as an incorporated society under the Act.

4. ACT AND REGULATIONS

Nothing in this Constitution authorises the Society to do anything which contravenes or is inconsistent with the Act, any regulations made under the Act, or any other legislation.

5. REGISTERED OFFICE AND CONTACT PERSON

5.1. **Registered Office:** The registered office of the Society shall be at such place as determined by the Committee from time to time.

5.2. **Contact Person:** The Society shall have at least 1 but no more than 3 contact person(s). The Society's contact person(s) shall be appointed and removed by the Committee and must be:

- (a) at least 18 years of age; and
- (b) ordinarily resident in New Zealand.

Any change to a contact person or that person's name or contact details shall be notified to the Registrar of Incorporated Societies within 20 Clear Days of that change occurring, or the Society becoming aware of the change.

6. MEMBERSHIP

6.1. **Membership Categories:** The Society shall have three categories of Members:

- (a) Full Members (Rule 6.3);
- (b) Affiliate Members (Rule 6.4); and
- (c) Foundation Members (Rule 6.5).

Within the specified membership categories there may be sub-categories of membership as determined by the Committee.

6.2. **Eligibility:** All persons with an expressed interest in the Internet industry, who support the purposes of the Society and who meet any other criteria specified by the Committee shall be eligible to become Members.

6.3. **Full Members:** Full Members shall:

- (a) be entitled to all the rights and privileges of full membership of the Society including the right to speak and vote at General Meetings; and



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- (b) have the right to connect to any Internet exchange operated by the Society subject to compliance with any applicable terms and conditions imposed by the Committee.

6.4. **Affiliate Members:** Affiliate Members:

- (a) shall not have voting rights; and
- (b) may, with the approval of the Committee and subject to compliance with any applicable terms and conditions, connect to any Internet exchange operated by the Society.

6.5. **Foundation Members:** Each Foundation Member shall:

- (a) be entitled to all the rights and privileges of a Full Member of the Society (and, to avoid doubt, shall be included in any count of Full Members for the purpose of the quorum requirements in Rule 7.4) but shall not be required to pay any membership fee; and
- (b) have the other rights, powers and privileges as are set out in this Constitution,

until the earlier of, such time as that Foundation Member resigns as a Foundation Member by notice in writing to the Society including, in the case of the Initial Fiji Representative and the Initial Samoa Representative, a deemed resignation under Rule 6.6(d).

Following the resignation of all of the Foundation Members, Rules 8.1(a) and 16.1(b) shall cease to have any effect and the requirement in Rule 17.3(a) for a majority of the Foundation Members to approve a first resolution to wind up the Society shall no longer apply.

6.6. **New Foundation Members:** Each of the Initial Fiji Representative and the Initial Samoa Representative (in this Rule 6.6, each being a “Nominator”) shall have the right to appoint another person (in this Rule 6.6, the “Nominee”) to be a Foundation Member in its place. The exercise of the Nominator’s right of appointment shall be subject to the following requirements:

- (a) the Nominee must be incorporated or established in the same country as the Nominator and must be, in the reasonable opinion of the Nominator, a person who:
 - (i) has an established interest in the development, improvement and protection of internet services in that country and in the Region generally; and
 - (ii) is willing and able to promote and advance the purposes of the Society as provided in Rule 3.2.
- (b) appointment of a Nominee shall be made by notice in writing to the Secretary duly signed by or on behalf of the Nominator (“Notice”). The Notice shall include:
 - (i) the name and contact details of the Nominee and the Nominee’s Authorised Person;
 - (ii) the written consent of the Nominee to becoming a New Foundation Member in the form reasonably required by the Committee; and
 - (iii) the effective date of the Nominee’s appointment and the Nominator’s resignation as a Foundation Member, which shall be not be less than 40 Clear Days from the date of the Notice (the “Effective Date”).



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- (c) the Nominator may withdraw its Notice and the appointment any time prior to the Effective Date by notice in writing to the Secretary. If a Notice is so withdrawn, the relevant Nominator may make another future appointment in accordance with this Rule 6.6.
 - (d) if an appointment has not been withdrawn in accordance with Rule 6.6(c), on and with effect from the Effective Date,
 - (i) the Nominator shall be deemed to have:
 - (aa) given notice under Rule 8.6(a) removing the Committee Member appointed by the Nominator (if any); and
 - (bb) resigned as a Foundation Member of the Society; and
 - (ii) the Nominee shall become a New Foundation Member with the rights and privileges of a Foundation Member under this Constitution (other than the right under this Rule 6.6 to nominate a replacement).
- 6.7. **Conduct:** All Members shall promote the interests and the purposes of the Society and shall do nothing to bring the Society into disrepute.
- 6.8. **Applications for Membership:** Every applicant for membership must consent in writing to becoming a Member. An applicant for membership shall make application to the Committee in the form and manner as the Committee shall decide and supply any further information or attend an interview as may be reasonably required by the Committee. The Committee may accept or decline application for membership on any lawful grounds. The Committee is not required to give reasons for any refusal to grant membership but may choose to do so.
- 6.9. **Nomination of Authorised Person:** Where a Member is a company, association or other entity, whether incorporated or not and whether or not having a separate legal personality, that Member shall nominate in writing from time to time a natural person as its Authorised Representative in matters relating to the Society that require the involvement of that Member including, unless otherwise specified in this Constitution, election as a Committee Member or appointment to any sub-committee acting on behalf of the Society. Nothing in this Rule shall relieve that Member of its obligations to comply with this Constitution.
- 6.10. **Term of Membership:** The term of membership for all Members shall:
 - (a) commence on the date the person's membership is accepted by the Committee or any other date as may be specified by the Committee; and
 - (b) continue until membership ceases in accordance with Rule 6.11 or Rule 6.12.
- 6.11. **Cessation of Membership:** A Member ceases to be a Member:
 - (a) on death (or if a body corporate on liquidation or deregistration, or if a partnership on dissolution of the partnership);



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(b) by resignation from that Member's class of membership by notice to the Secretary including, in the case of the Initial Fiji Representative and the Initial Samoa Representative, a deemed resignation under Rule 6.6(d)(i); or

(c) on termination of that Member's membership under this Constitution,

with effect from (as applicable):

(d) the date of death of the Member (or if a body corporate from the date of its liquidation or deregistration, or if a partnership from the date of its dissolution);

(e) the date 10 Clear Days after receipt of the notice of resignation by the Secretary (or any later date stated in the notice of resignation);

(f) in the case of the Initial Fiji Representative and the Initial Samoa Representative, the date of any deemed resignation in accordance with Rule 6.6(d)(i);

(g) the date of termination of membership under this Constitution; or

(h) the date specified in a resolution of the Committee.

6.12. **Termination of Membership:** The Committee may determine to end the membership of any Member other than a Foundation Member if:

(a) any payment due by the Member to the Society is more than 20 Clear Days overdue;

(b) the Member fails to observe this Constitution, or any bylaw, code or policy of the Society;

(c) the Committee considers that the conduct of the Member has or may materially and adversely affect the reputation of the Society; or

(d) the Member is convicted of a criminal offence in the Member's country of residence or incorporation,

and in accordance with the following procedure:

(e) the Committee must:

(i) give the Member written notice of its preliminary decision to terminate the Member's membership and the reasons for it;

(ii) allow the Member a reasonable time to remedy any default which can be remedied; and

(iii) give the Member a reasonable time and opportunity to explain its actions.

(f) the Member may explain its actions in writing to the Committee or by its Authorised Representative appearing before the Committee;

(g) the Committee may resolve to terminate the Member's membership if:



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- (i) the default cannot be remedied or is not remedied within the time allowed; and
 - (ii) the Member does not offer an explanation within the time allowed or the Committee does not accept the Member's explanation.
- (h) the Committee shall then give written notice of termination to the Member.

Termination of membership shall take effect from the date of the Committee's resolution in sub-paragraph (g) or such other date as may be determined by the Committee.

6.13. Obligations on Ceasing to be a Member: A Member who resigns or whose membership otherwise ends under this Constitution:

- (a) remains liable to the Society for payment of all moneys which are due for payment before his, her or its membership ends;
- (b) must immediately return to the Society all property of the Society which is in the Member's possession or control; and
- (c) must not hold him, her or itself out in the future as a Member of the Society.

6.14. Becoming a Member Again: Any former Member may apply for re-admission in the manner prescribed for new applicants. If a former Member's membership was terminated by the Committee under Rule 6.12 or following a dispute resolution process however, the applicant may be re-admitted only by resolution of the Members at a General Meeting on the recommendation of the Committee.

6.15. Register of Members: The Secretary shall keep a register of Members which shall include the information prescribed by the Act. Every Member shall promptly advise the Society of any change to that Member's details.

6.16. Access to Register of Members: With reasonable notice and at reasonable times, the Society shall make the Register of Members available for inspection by Members and Committee Members. However, no access will be given to information on the Register of Members to Members or any other person, other than as required by law.

7. MEETINGS

7.1. Committee Meetings:

- (a) **Timing:** The Committee shall meet as required at such times and places as it may determine and otherwise as convened by the Chairperson or Secretary. The Chairperson or Secretary must convene a Committee Meeting as soon as reasonably practicable on the written request of any 2 Committee Members.
- (b) **Chairperson:** In the absence of the Chairperson, the Committee shall elect another Committee Member to act as chairperson for that meeting.
- (c) **Quorum:** At any Committee Meeting a quorum will be a majority of the Committee Members. If a quorum is not present within thirty minutes of the starting time for the meeting then no business shall be discussed



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and the meeting shall be adjourned to a date, being not less than 5 Clear Days later at the time and venue fixed by those Committee Members who are present. At such reconvened meeting if a quorum is not present then those Committee Members present 30 minutes after the starting time of the reconvened meeting shall constitute a quorum.

- (d) **Voting:** At all Committee Meetings each member of the Committee, except the Patron (who shall not have a vote), shall have one vote provided that in the situation where the vote is split equally then the Chairperson shall have a second and casting vote. Resolutions of the Committee shall be passed by majority.
- (e) **Written Resolution of the Committee:** Notwithstanding any contrary provision in this Constitution, a resolution in writing signed or otherwise assented to by all of the Committee Members entitled to vote shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted. Such resolution in writing may be in an electronic form or consist of several documents (including documents sent by electronic mail or other visible form of electronic communication) in like form, each signed or assented to by one or more of the Committee Members.
- (f) **Closed Meetings:** Committee meetings shall be private and exclude other Members of the Society, unless resolved by the Committee otherwise.

7.2. Annual General Meeting:

- (a) **Timing:** The Society shall hold an Annual General Meeting on a date and location as determined by the Committee and consistent with any requirements in the Act.
- (b) **Notice:** Notice of the Annual General Meeting shall be given to members in writing, with an agenda, at least 20 Clear Days before such meeting. Notice may be given by such medium as the Committee considers desirable.
- (c) **Purpose:** The primary purposes of the Annual General Meeting shall be to:
 - (i) confirm the minutes of previous General Meeting(s);
 - (ii) adopt the annual report on the Society's business;
 - (iii) adopt the Treasurer's report on the finances of the Society, the annual financial statements and any auditor's report;
 - (iv) set annual membership fees, if any, after considering any recommendation of the Committee in that regard;
 - (v) Consider any motions, including the election or removal of such Committee members as may be necessary or considered desirable by the Members;
 - (vi) Appoint an auditor for the ensuing year if required or if so requested by not less than 10% of the Members in attendance at the Annual General Meeting; and
 - (vii) Consider any general business.
- (d) **Information to be presented:** The Committee must present the following information at each Annual General Meeting:
 - (i) an annual report on the affairs of the Society during the most recently completed accounting period;



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- (ii) the annual financial statements for that period and any auditor's report; and
- (iii) notice of any disclosures of conflicts of interest made by Committee Members during that period (including a brief summary of the matters, or types of matters, to which those disclosures relate).

7.3. **Special General Meetings:**

- (a) **Calling of:** A Special General Meeting of the Society shall be called within 5 Clear Days by the Committee on receipt of a written request signed by:
 - (i) at least two members of the Committee; or
 - (ii) at least five Members of the Society.Any such request must state the business that the Special Business Meeting is to deal with.
- (b) **Notice:** At least 10 Clear Days' notice shall be given to Members of any Special General Meeting and the only business to be discussed at the Special General Meeting will be to:
 - (i) pass a resolution of no confidence in the Committee; and/or
 - (ii) consider any business included in the written request which led to the convening of the Special General Meeting.

7.4. **Quorum for General Meetings:** A quorum for any General Meeting of the Society will be 15 Full Members or one-third of the Full Members, whichever is the lesser attending in person or by proxy. As long as the Society has one or more Foundation Members, at least one Foundation Member must be included in the number of Full Members for the purpose of establishing a quorum under this Rule.

If a quorum is not present within 30 minutes of the starting time for the meeting then no business shall be discussed and:

- (a) in the case of an Annual General Meeting or a Special General Meeting convened at the request of the Committee under Rule 8.3(a)(i), the meeting shall be adjourned to the day, time and venue determined by the Chairperson or the person appointed in accordance with Rule 8.6 to chair the meeting. At such reconvened meeting if a quorum is not present then those Full Members present 30 minutes after the starting time of the reconvened meeting shall constitute a quorum; and
- (b) in the case of a Special General Meeting convened at the request of Members under Rule 8.3(a)(ii), shall be dissolved.

7.5. **Format of Meetings:** All meetings of the Committee and General Meetings may be held at one or more venues and may include use of any audio link, audiovisual link or other electronic communication that gives each Member or Committee Member a reasonable opportunity to participate. The technical protocols and procedures for the implementation of meetings involving audio link, audiovisual link or other electronic communication will be detailed in guidelines as determined from time to time by the Committee.

7.6. **Chairperson:** The Chairperson will chair all General Meetings. If the Chairperson is not present within 15 minutes of the start time, the Secretary may chair the meeting. If neither the Chairperson nor Secretary are present at the meeting within 15 minutes of the start time, those Full Members present may elect another Committee Member to chair the meeting. Any person chairing a General Meeting may:



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- (a) with the consent of that General Meeting adjourn the General Meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
- (b) direct that any person not entitled to be present at the Meeting, obstructing the business of the Meeting, behaving in a disorderly manner, being abusive, or failing to abide by the directions of the chairperson be removed from the Meeting; and
- (c) in the absence of a quorum or in the case of emergency, adjourn the Meeting or declare it closed.

7.7. **Minutes:** Minutes of all General Meetings must be kept by the Secretary.

7.8. **Resolution in lieu of Meeting:** If so determined by the Committee, the Society may, in accordance with Subpart 5 of the Act, pass a written Resolution in lieu of a General Meeting other than a Resolution under:

- (a) Rule 17 (Alterations of Constitution); or
- (b) Rule 18 (Winding Up).

Any such written resolution shall lapse if not approved by at least seventy-five percent of the Members entitled to vote within 20 Clear Days of the circulation date (as that term is defined in section 90(1)(a) of the Act).

A Member may approve such written resolution by signing the Resolution or by otherwise giving their approval to the resolution by such electronic means as the Committee may reasonably provide for that purpose.

8. MANAGEMENT COMMITTEE

8.1. **Composition:** The Committee shall consist of not less than three and up to seven persons appointed or elected as follows:

- (a) up to three persons appointed by the Foundation Members by notice in writing to the Society with each Foundation Member being entitled to appoint one person (who may, but need not be, that Foundation Member's Authorised Representative) to the Committee;
- (b) up to seven persons (less the number of current Foundation Members) elected to the Committee by the Members at an Annual General Meeting; and
- (c) if there is a vacancy on the Committee prior to the first Annual General Meeting or in the position of any Committee Member between Annual General Meetings, that vacancy may be filled by resolution of the Committee.

8.2. **Nominations:** A candidate for election at an Annual General Meeting may be nominated by any Full Member. A candidate's written nomination, accompanied by the consent and certificate of the nominee as required by Rule 8.4, must be received by the Secretary at least 10 Clear Days before the date of the Annual General Meeting. If



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insufficient nominations are received, further nominations may be received from the floor at the Annual General Meeting, subject to compliance with Rules 8.3 and 8.4.

- 8.3. **Restrictions:** Not more than one officer, member or employee of any Member company or Member organisation may simultaneously hold positions as Committee Members. Related companies (as defined by the Companies Act 1993 or the applicable legislation in the country of the Member) will be treated as a single company for this purpose. This provision:
- (a) shall not place any restriction on the nomination of candidates for election as Committee Members; and
 - (b) shall not apply in relation to any officer, member or employee of a Foundation Member including, without limitation, in relation to those persons (if any) appointed by the Foundation Members under Rule 8.1(a).
- 8.4. **Qualifications:** Prior to election or appointment, every prospective Committee Member must consent in writing to be a Committee Member and certify in writing that they are not disqualified from being appointed or holding office as a Committee Member by this Constitution or the Act.
- 8.5. **Election of Officers:** At the first Committee meeting and the first Committee meeting following each Annual General Meeting, the Committee shall elect from amongst their number:
- (a) a Chairperson;
 - (b) a Treasurer;
 - (c) a Secretary; and
 - (d) such other officers (if any) as determined by the Committee.
- 8.6. **Term of Office:** Unless a Committee Member earlier resigns by notice in writing to the Society or is removed in accordance with Rule 8.7, Committee Members:
- (a) appointed by a Foundation Member in accordance with Rule 8.1(a) shall serve until removal by that Foundation Member by notice in writing to the Society;
 - (b) elected by the Members at an Annual General Meeting in accordance with Rule 8.1(b) shall serve a term of three years from the end of the Annual General Meeting in which they were appointed until the end of the next Annual General Meeting; and
 - (c) appointed by the Committee under Rule 8.1(c) shall serve from the time of appointment until the end of the next Annual General Meeting.
- 8.7. **Removal of Committee Member:** Where a complaint is made about the actions or inaction of a Committee Member (in that person's capacity as a Committee Member and not in that Committee Member's capacity as a Member of the Society) the following steps shall be taken by the Committee:



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- (a) the Committee Member who is the subject of the complaint, must be:
 - (i) advised in writing of all details of the complaint; and
 - (ii) given adequate time as determined by the Committee to prepare a response.
- (b) the complainant and the Committee Member who is the subject of the complaint, must be given an adequate opportunity to be heard, either in writing or at an oral hearing by the Committee (excluding the Committee Member who is the subject of the complaint) if it considers that an oral hearing is required.
- (c) any oral hearing shall be held by the Committee (excluding the Committee Member who is the subject of the complaint), and/or any oral or written statement or submissions shall be considered by the Committee (excluding the Committee Member who is the subject of the complaint).

If the complaint is upheld, the Committee Member may be removed from the Committee by a resolution of the Committee or of a General Meeting, in either case passed by a simple majority of those present and voting.

9. POWERS OF THE MANAGEMENT COMMITTEE

9.1. **General Powers:** From the end of each Annual General Meeting until the end of the next Annual General Meeting, the Society shall be governed by the Committee, which shall be accountable to the Members for the advancement of the Society's purposes and the implementation of resolutions approved by any General Meeting. Without limiting the foregoing, the Committee shall have the power to:

- (a) **Bylaws:** determine bylaws (to be known as "Bylaws") covering any matters as the Committee in its discretion deems appropriate, provided they are not inconsistent with this Constitution, the Act or regulations made under the Act. Bylaws shall be binding on all Members and may be rescinded, amended, or added to from time to time but only by resolution of the Committee.
- (b) **Delegates:** appoint and to instruct delegates or representatives to bodies with which the Society is affiliated or which have provisions for representation of the Society at their meetings.
- (c) **Employees:** employ and dismiss staff on such terms as the Committee considers necessary or desirable.
- (d) **Temporary Appointments:** appoint a person to temporarily fulfil the duties of any officer of the Society during such period as such officer is unable to fulfil his/her duties.
- (e) **Patron:** appoint a Patron of the Society from time to time on terms to be agreed between the Committee and the Patron. The Committee shall also have power to remove the Patron at any time and the Patron may also resign at any time.

9.2. **Duties of Committee Members:** At all times each Committee Member:

- (a) shall act in good faith and in what he or she believes to be the best interests of the Society;
- (b) must exercise all powers for a proper purpose;



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- (c) must not act, or agree to the Society acting, in a manner that contravenes the Act or this Constitution;
- (d) when exercising powers or performing duties as a Committee Member, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account, but without limitation, the nature of the Society, the nature of the decision, the position of the Committee Member and the nature of the responsibilities undertaken by him or her;
- (e) must not agree to the activities of the Society being carried on in a manner likely to create a substantial risk of serious loss to the Society or to the Society's creditors, or cause or allow the activities of the Society to be carried on in a manner likely to create a substantial risk of serious loss to the Society or to the Society's creditors; and
- (f) must not agree to the Society incurring an obligation unless he or she believes at that time on reasonable grounds that the Society will be able to perform the obligation when it is required to do so.

9.3. **Sub-Committees:** The Committee may appoint sub-committees consisting of such persons (whether or not Members of the Society) and for such purposes as it thinks fit. Unless otherwise resolved by the Committee:

- (a) the quorum of every sub-committee is half the members of the sub-committee but not less than two;
- (b) no sub-committee shall have power to co-opt additional members;
- (c) a sub-committee must not commit the Society to any financial expenditure without express authority; and
- (d) a sub-committee must not further delegate any of its powers.

9.4. **Officers' Indemnities and Insurance:** The Society is expressly authorised to indemnify and/or insure any Committee Member against:

- (a) liability (other than criminal liability) for a failure to comply with a duty under sections 54 or 61 of the Act or any other duty imposed on the Committee Member in his or her capacity as a member of the Committee; and
- (b) costs incurred by that Committee Member for any claim or proceeding relating to that liability,

to the maximum extent permitted by the Act.

10. CONFLICTS OF INTEREST

10.1. **Disclosure of Interest:** A Committee Member and/or member of a sub-committee who is an Interested Member in respect of any matter being considered by the Society, must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified):

- (a) to the Committee and/or sub-committee; and



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- (b) to the Secretary (or such other person as maybe appointed under Rule 10.3 for that purpose) to record in the Interests Register.

Disclosure must be made as soon as practicable after the member of the Committee and/or sub-committee becomes aware that they are interested in the matter.

10.2. **Consequences of Interest:** A Committee Member and/or member of a sub-committee who is an Interested Member regarding a matter:

- (a) must not vote or take part in the decision of the Committee and/or sub-committee relating to the matter; and

- (b) must not sign any document relating to the entry into a transaction or the initiation of the matter;

but:

- (c) may take part in any discussion of the Committee and/or sub-committee relating to the matter and be present at the time of the decision of the Committee and/or sub-committee (unless the Committee and/or sub-committee decides otherwise); and

- (d) may still be counted for the purpose of determining whether there is a quorum at any meeting at which the matter is considered.

Where 50 per cent or more of Committee Members are prevented from voting on a matter because they are interested in that matter, a Special General Meeting must be called to consider and determine the matter, and where 50 per cent or more of the members of a sub-committee are prevented from voting on a matter because they are interested in that matter, the Committee shall consider and determine the matter.

10.3. **Interests Register:** The Secretary, or such other person as is appointed by the Committee for that purpose, shall maintain an up-to-date register of the interests disclosed by Committee Members.

11. VOTING AT GENERAL MEETINGS

11.1. **Method:** Each Full Member attending a General Meeting either in person or by proxy shall be entitled to one vote provided that if any Full Member is in default in payment of any annual membership fees or any other amount due and owing to the Society, such Member shall not be entitled to vote. To avoid doubt, a Full Member which is a body corporate may appoint a proxy or may be represented by its Authorised Representative. If the General Meeting incorporates attendance by audio, audio and visual or other electronic communication, those attending by such means shall vote by the electronic means specified in the notice of meeting or as otherwise specified by the Committee. Voting shall otherwise be by a show of hands or a poll and in accordance with the following provisions.

11.2. **Declaration:** Unless a poll is specifically requested, a declaration by the chairperson that the Resolution has been passed shall be considered conclusive proof that it was.



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- 11.3. **Poll:** If a poll is requested by five or more Members at the meeting in response to a Resolution it shall be taken in such a manner as directed by the Chairperson and either at the meeting, or by postal or electronic ballot within 10 Clear Days of the meeting at which the poll is demanded, and the result of the poll shall be deemed to be the result of the Resolution.
- 11.4. **Decisions:** All decisions of General Meetings will be made by a majority of the votes of those Members present and entitled to vote unless this Constitution provide otherwise.
- 11.5. **Casting Vote:** In the case of equality of votes the person chairing the General Meeting shall be entitled to a second or casting vote.
- 11.6. **Proxies:** To be effective, a proxy must be appointed by a notice in writing that is signed by the Member in favour of some individual entitled to be present at the meeting and received by or handed to the Secretary, at least 1 Clear Day prior to the date of the relevant General Meeting. A proxy need not be a Member. Such notice of proxy must state whether the proxy is for a particular meeting (which shall include any adjournment) or for a particular period, not exceeding 12 months. The notice of proxy may direct the proxy to vote in a particular way in respect of any Resolution but if it does not then the proxy shall be free to vote on any Resolution as he or she thinks fit.

12. FINANCIAL MATTERS

- 12.1. **Financial Year:** Unless otherwise resolved by the Members, the financial year of the Society shall begin on 1 April and ends on 31 March the following year.
- 12.2. **Bank Accounts:** The Committee is authorised to open and operate bank accounts. The signatories of any such account(s) shall be any two of such persons as are designated for that purpose by the Committee from time to time. All funds received by the Society must be paid into its nominated bank account(s).
- 12.3. **Financial Records:** The Committee must
- (a) keep, or cause to be kept, at all times proper accounting records that:
 - (i) correctly record the transactions of the Society;
 - (ii) allow the Society to produce financial statements that comply with the requirements of this Constitution and the Act; and
 - (iii) would enable the financial statements to be readily and properly reviewed or audited if so required under this Constitution or the Act.
 - (b) establish and maintain a satisfactory system of control of the Society's accounting records.
- 12.4. **Annual Accounts:** The Committee must arrange for annual financial statements of the Society to be promptly prepared in accordance with generally accepted accounting practice at the end of each financial year. The annual financial statements for the preceding financial year must be:
- (a) submitted to each Annual General Meeting; and
 - (b) filed with the Registrar of Incorporated Societies in the manner required by the Act.



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12.5. **Audit of Financial Statements:** If an audit of the Society's annual financial statements is required (including pursuant to a request in accordance with Rule 7.2(c)(vi)), the Society shall appoint an auditor to audit the annual financial statements of the Society for the relevant year. The auditor must be a suitably qualified person and must not be a member of the Committee, or an employee of the Society. If the Society appoints an auditor who is unable to act for some reason, the Committee shall appoint another auditor as a replacement. The Committee is responsible to provide the auditor with:

- (a) access to all information of which the Committee is aware that is relevant to the preparation of the financial statements such as records, documentation and other matters;
- (b) additional information that the auditor may request from the Committee for the purpose of the audit; and
- (c) reasonable access to persons within the Society from whom the auditor determines it is necessary to obtain information.

13. APPLICATION OF INCOME AND PECUNIARY GAIN

13.1. **Application of Income:** The income and property of the Society shall be applied to the purposes and objects of the Society within the Region.

13.2. **No Financial Gain:** The Society must not operate for the purpose of, or with the effect of:

- (a) any Member of the Society deriving any personal financial gain from membership of the Society, other than as may be permitted by law; or
- (b) returning all or part of the surplus generated by the Society's operations to Members, in money or in kind; or
- (c) conferring any kind of ownership in the Society's assets on Members,

but the Society will not operate for the financial gain of Members merely because the Society will or may undertake any of the activities in section 24(1) of the Act.

13.3. **Interested Member:** No Member, Authorised Representative of a Member or other person associated with a Member shall participate in or materially influence any decision made by the Society in respect of the payment to or on behalf of that Member, Authorised Representative or other associated person of any income, benefit or advantage. Any such payment made by the Society to or on behalf of a Member or any person associated with a Member shall be reasonable and comparable to payments that would be paid on arm's length terms (being the open market value).

14. METHOD OF CONTRACTING

The Society may enter into any contract or other enforceable obligation in the manner provided by the Act.



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15. DISPUTE RESOLUTION

The resolution of disputes (as that term is defined in the Act) must be conducted in accordance with the dispute resolution procedures set out in clauses 2 to 8 of Schedule 2 of the Act. Members and Committee Members are obliged to cooperate to resolve disputes efficiently, effectively, fairly and with minimum disruption to the activities of the Society.

16. ALTERATIONS OF CONSTITUTION

16.1. **Procedure:** This Constitution may only be altered, added to or repealed by a resolution passed by:

- (a) at least a 2/3rds (67%) majority of the Full Members; and
- (b) where the Society has one or more Foundation Members, a majority of the Foundation Members,

present and entitled to vote at a General Meeting called in accordance with this Constitution.

16.2. **Timing:** Notice of an intention to alter this Constitution must be proposed by the Committee or at least two Full Members in writing by submitting the proposed amendments to the Secretary at least 15 Clear Days prior to an Annual General Meeting or as part of a request to hold a Special General Meeting made in accordance with Rule 7.3.

16.3. **Notice:** When an amendment to the Constitution is approved by a General Meeting it shall be notified to the Registrar of Incorporated Societies in the form and manner specified in the Act for registration and shall take effect from the date of registration.

17. WINDING UP

17.1. **Voluntary Winding Up:** The Society may be wound up and removed from the Register of Incorporated Societies or put into liquidation in accordance with this Rule 17 and the provisions of the Act.

17.2. **Notice:** The Committee shall give notice to all Members of:

- (a) the proposed resolution to wind up the Society and remove it from the Register of Incorporated Societies or to put the Society into liquidation;
- (b) the General Meeting at which any such proposal is to be considered;
- (c) the reasons for the proposal; and
- (d) any recommendations from the Committee in respect to such proposal.

17.3. **Process:** A Resolution to wind up the Society and remove it from the Register of Incorporated Societies or to put the Society into liquidation must be:



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- (a) approved at the General Meeting and, where the Society has one or more Foundation Members, approved by a majority of the Foundation Members; and
- (b) confirmed by a second Resolution at a subsequent Special General Meeting called for that purpose and held not earlier than 30 Clear Days after the date on which the Resolution to be confirmed was passed.

17.4. **Surplus Assets:** On the winding up or liquidation or removal from the Register of Incorporated Societies of the Society, its surplus assets after payment of all debts, costs and liabilities:

- (a) shall be vested in one or more not-for-profit entities as may be resolved by the Members in the Resolutions passed under Rule 17.3(b) so long as the Society complies with this Constitution and the Act in all respects; or
- (b) shall otherwise be vested in one or more not-for-profit entities within the Region with a similar purpose to that of the Society.

18. INTERPRETATION OF THIS CONSTITUTION

18.1. **Substantial Compliance:** A substantial compliance with this Constitution whether as to form, time, number or any other matter in all cases shall be good and sufficient and no regulation, resolution, decision, election, appointment, notice or other matter or thing shall be invalidated by reason only of a failure to comply exactly with this Constitution. In particular, the accidental omission to give notice to, or the non-receipt of notice by, any Member or Committee Member shall not invalidate the proceedings at any meeting to which the notice relates.

Appendix 2

New member consent form

(see overleaf)

PACIFIC ISLANDS INTERNET EXCHANGE (“the Society”)

CONSENT OF INITIAL MEMBER

Member Name:

First name(s): Surname:

Or

Corporate Name:

Member Contact Details

Address – Number: Street:

Suburb: City:

Post Code: Country:

Telephone: Mobile:

Email: Alternate Email:

(for Body Corporate Members only)

Authorised Representative Details

First name(s): Surname:

Position in Organisation:

Address – Number: Street:

Suburb: City:

Post Code: Country:

Telephone: Mobile:

Email: Alternate Email:

Personal Information – Privacy

Collection of your personal information is required for the Society to register you as a Member of the Society.

This information will be stored in the register of members required to be kept by the Society under section 79 of the Incorporated Societies Act 2022.

The Society will use this information for the purposes of communicating with you in relation to the activities of the Society, verifying your identity, communicating with you about services provided by the Society and for any other purpose required by law.

The Society may disclose member names on any website operated by the Society. The Society may disclose your personal information to third parties in order to provide you with member services or support for such services. The Society may also disclose your personal information to persons it is legally required to provide you information to such as regulatory authorities and law enforcement agencies.

You have a right to access and correct personal information the Society holds about you.

The Society is required to retain in the register of members, the name of each member of the Society for a period of 7 years from the date that person ceased to be a member.

Member Consent

As the person named above or as that person’s duly authorised representative, I hereby:

- (a) consent to myself/the above named entity being a member of the Society;
- (b) acknowledge receipt of a copy of the rules of the Society;
- (c) agree that I/the entity named above will comply with the Society’s rules; and
- (d) consent to the incorporation of the Society under the Incorporated Societies Act 2022.

Signature of Member or Member’s duly authorised Representative:

Signature:

Name:

Date.....

Appendix 3

Consent and certificate of officer

(see overleaf)

Consent and certificate of officer

Section 47 Incorporated Societies Act 2022

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Template IS22-CCO

Version | May 2024

Society name

Registration number or NZBN (complete this field only if this consent relates to an existing society)

NOTES FOR OFFICERS

Ensure that you meet the qualification criteria for being an officer of this society before signing this consent form (see the qualification criteria on page 2). By signing this consent, you also consent to these details being added to the Incorporated Societies Register for this society. Your contact address and email address will only be visible to, and used by, the Registrar – they will not be displayed on the public register. Remember to advise the society any time these details change.

NOTES FOR SOCIETIES

You won't be asked to upload a copy of this consent and certificate to the Incorporated Societies Register but you must keep a copy in your records.

Officer's details

Provide your full legal name as it appears on a form of identification, such as your driver licence or NZ passport.

First name

Middle name(s)

Last name

Are you a member of this society?

Yes

No

Contact address – This must be a street address that you use, it can't be a PO Box or DX address

Street number & name

City

Post code

Country

Contact email address

Date elected or appointed

Officer's declaration

I consent to be an officer of the above society and certify that I am not disqualified from being appointed or holding office as an officer of a society.

.....
(Signature)

Date signed