

ICANN BOARD PAPER NO. 2021-09-12-C3a

TITLE: OMBUDSMAN FY21 AT-RISK COMPENSATION

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

In accordance with its charter, the Compensation Committee is responsible for evaluating and recommending a percentage of the Ombudsman's annual at-risk compensation component to the Board for approval. The Compensation Committee has agreed an amount to recommend for the Ombudsman's FY21 at-risk component and the Board is now being asked to approve the Compensation Committee's recommendation.

Confidential Employment Matter

PROPOSED PUBLIC RESOLUTION:

Whereas, the Compensation Committee recommended that the Board approve payment to the Ombudsman of his FY21 at-risk compensation.

Resolved (2021.09.12.Cxx), the Board hereby approves a payment to the Ombudsman of his FY21 at-risk compensation component.

Resolved (2021.09.12.Cxx), portions of this action by the Board shall remain confidential as an “action relating to personnel or employment matters”, pursuant to Article 3, section 3.5b of the ICANN Bylaws.

PROPOSED RATIONALE:

Annually the Ombudsman has an opportunity to earn a portion of his compensation based on specific performance goals set by the Board, through the Compensation Committee. This not only provides incentive for the Ombudsman to perform above and beyond his regular duties, but also leads to regular touch points between the Ombudsman and Board members during the year to help ensure that the Ombudsman is achieving his goals and serving the needs of the ICANN community.

Evaluation of the Ombudsman’s objectives results from both the Ombudsman self-assessment as well as review by the Compensation Committee, leading to a recommendation to the Board with which the Board agrees.

Evaluating the Ombudsman’s annual performance objectives is in furtherance of the goals and mission of ICANN and helps increase the Ombudsman’s service to the ICANN community, which is in the public interest.

While there is a fiscal impact from the results of the scoring, that impact was already accounted for in the FY21 budget. This action will have no impact on the security, stability or resiliency of the domain name system.

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

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 26 July 2021
Email: amy.stathos@icann.org

Pages 3 - 7 Removed - Confidential Employment Matter

ICANN BOARD SUBMISSION NO. 2021.09.03.C3b

TITLE: Update on Independent Review Process re: Application
for .GCC

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

Privileged and Confidential

PROPOSED RESOLUTION:

Whereas, GCCIX, W.L.L. (the applicant for .GCC) initiated an Independent Review Process (IRP) challenging the ICANN Board's acceptance of Governmental Advisory Committee (GAC) consensus advice that the .GCC application should not proceed.

Whereas, in light of certain prior IRP Panel Declarations, the Board Accountability Mechanisms Committee (BAMC) discussed whether, in advance of proceeding with the current .GCC IRP, it would be helpful to seek further information from the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

Whereas, the BAMC recommended that the Board authorize the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

Resolved (2021.09.12.xx), the Board authorizes the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

PROPOSED RATIONALE:

After careful review of the underlying facts, prior applicable IRP Panel Declarations, and the BAMC's recommendation, the Board has concluded that, before proceeding further with the .GCC IRP, it could be beneficial to ask the GAC for any new or additional information that the GAC might choose to offer regarding its advice that the .GCC application should not proceed. The Board, therefore, authorizes the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

Background Information¹

In 2012, GCCIX submitted an [application](#) to operate a .GCC gTLD, stating in part:

GCC refers generally, but not exclusively, to the Cooperation Council for the Arab States of the Gulf.² Formed in May 1981 as a regional organization, it consists of six Gulf countries including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. Its main objectives are to enhance coordination, integration and inter-connection between its members in different spheres. This application is not connected with or sponsored by the Council. .GCC does not purport to represent the Council.

Given this lack of connection with, and lack of support from, the Gulf Cooperation Council, which is commonly referred to as the "GCC," the GCC, along with the governments of Bahrain, Oman, Qatar and UAE, issued a [GAC Early Warning](#) in November 2012 expressing "serious concerns" regarding GCCIX's .GCC application because the applied-for gTLD "matches a name of an Intergovernmental Organization" (IGO), namely, the GCC, and "[lacks] . . . community involvement and support," noting

¹ Further background information is provided in the accompanying Reference Materials.

² The Cooperation Council for the Arab States of the Gulf is also known as the Gulf Cooperation Council.

that the .GCC application “clearly shows that the applicant is targeting the GCC community which basically covers the 6 member states of the GCC.”

In March 2013, the GCC filed a [Legal Rights Objection](#) (LRO) with the World Intellectual Property Organization Arbitration and Mediation Center (WIPO) against GCCIX’s application, claiming that the .GCC application takes advantage of the distinctive character and reputation of the “GCC” acronym and creates a likelihood of confusion between the applied-for gTLD and the GCC’s IGO acronym.

In April 2013, the GAC issued the [Beijing Communiqué](#), which provided GAC consensus advice that the application for .GCC should not proceed. The New gTLD Program Committee (NGPC) [accepted](#) the GAC consensus advice on the .GCC application in June 2013 and removed the application from further processing.³ The NGPC’s rationale was based upon the Guidebook provision stating that GAC consensus advice against an application creates “a strong presumption for the ICANN Board that the application should not be approved.” (Guidebook at § 3.1(l).) GCCIX filed [Reconsideration Request 13-17](#) challenging the NGPC’s acceptance of the GAC consensus advice on the .GCC application, which was denied by the Board Governance Committee (BGC).

After engaging in the Cooperative Engagement Process for several years, GCCIX filed an [IRP Request](#) in June 2021. Among other claims, GCCIX alleges that the NGPC violated ICANN’s Articles of Incorporation (Articles) and Bylaws by accepting the GAC advice on .GCC “despite [a] lack of any rationale provided by GAC for its advice” and by failing “to request [a] rationale from the GAC, investigate the matter or otherwise consider the public interest” before accepting the GAC advice. (IRP Request at 18.) GCCIX also alleges that the NGPC acted contrary to the Articles and Bylaws by “refus[ing] to provide any rationale for the NGPC decision to accept GAC advice.” (IRP Request at 18.) In addition, GCCIX claims that the BGC violated ICANN’s Articles and

³ At the time that the NGPC accepted the GAC consensus advice on the .GCC application, the LRO proceeding against the application was pending. WIPO, the LRO provider for this matter, sought ICANN’s advice on whether to proceed with the LRO regarding .GCC. ICANN advised WIPO that the LRO should be terminated because the NGPC had removed the .GCC application from further processing based on its acceptance of the GAC consensus advice.

Bylaws by denying GCCIX's "Request for Reconsideration as to the above actions and inactions, without providing any additional analysis or rationale, or conducting any further investigation."⁴ (IRP Request at 18.) Finally, GCCIX alleges that the IRP Declarations in the .AFRICA and .AMAZON IRPs are precedential, binding on ICANN, and are dispositive on the claims asserted by GCCIX regarding the actions of the NGPC and BGC in accepting the GAC consensus advice noted above. (IRP Request at 16-17, 19, 27-28, 29.)

ICANN has generally followed a practice of not taking any actions on applications that are the subject of a pending Accountability Mechanism out of deference to ICANN's Accountability Mechanisms. However, since there are certain similarities with the prior .AFRICA and .AMAZON IRPs as well as guidance provided in those IRP Declarations, the Board has determined that, under these circumstances, this is an opportunity to consider alternatives to that general practice. Accordingly, before proceeding further with the .GCC IRP, the BAMC carefully considered options regarding next steps and concluded that it could be beneficial to ask the GAC for any new or additional information that the GAC might choose to offer regarding its advice that the .GCC application should not proceed. The BAMC therefore has recommended that the Board authorize the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

The Board agrees with this approach and notes that such discussions with the GAC (if the GAC is open to such discussions) could provide valuable information that may be beneficial to reaching a determination as to the next steps regarding the .GCC IRP and the .GCC application.

This action is within ICANN's Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures.

⁴ GCCIX submitted its Reconsideration Request challenging the NGPC's acceptance of the GAC consensus advice in 2013. At that time, the BGC, not the BAMC, was responsible for addressing Reconsideration Requests.

This accountability includes having a process in place by which a person or entity materially affected by an action of the ICANN Board or staff may request reconsideration of that action or inaction by the Board. This action should have no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

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

Submitted by:	Amy A. Stathos, Deputy General Counsel
Date Noted:	3 September 2021
Email:	amy.stathos@icann.org

Pages 10-18 Removed - Privileged & Confidential Information

ICANN BOARD PAPER NO. 2021.09.12.C3c

TITLE: PRESIDENT AND CEO GOALS FOR FY22

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

Confidential Employment Matter

Confidential Employment Matter

PROPOSED RESOLUTION:

Whereas, the Compensation Committee has worked with the President and CEO to develop a set of performance goals for FY22.

Resolved (2021.09.12.Cxx), the Board hereby approves performance goals for the President and CEO for FY22.

PROPOSED RATIONALE:

When the President and CEO was hired, he was offered a base salary, plus an at-risk component of his compensation package. This same structure exists today. Consistent with all personnel with the ICANN organization, the President and CEO is to be evaluated against specific performance goals, which the President and CEO sets in coordination with the Compensation Committee and the Board.

The Compensation Committee discussed a set of performance goals for the President and CEO for FY22, some of which were proposed by the President and CEO and some were proposed by the Compensation Committee. The Board has evaluated these goals and agrees that they are appropriate and consistent with ICANN's Strategic and Operating plans.

Taking this decision is in furtherance of ICANN's Mission and is in the public interest in that the President and CEO's performance goals are fully consistent with ICANN's Strategic and Operating plans.

The decision to adopt FY22 performance goals for the President and CEO will not have a direct fiscal impact on ICANN until it is determined to pay him his at-risk payment after the first half of FY22, and any such impact is contemplated in the FY22 budget. This decision will not have an impact on the security, stability or resiliency of the domain name system.

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

Submitted By:	Amy A. Stathos, Deputy General Counsel
Date Noted:	7 September 2021
Email:	amy.stathos@icann.org

Pages 13-18 Removed - Confidential Employment Matter