

Our Ref: DS193972B-AW

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The Board of Directors
DotAsia Organisation Limited
12th Floor, Daily House
35-37 Haiphong Road
Tsim Sha Tsui
Kowloon, Hong Kong

8 January 2021

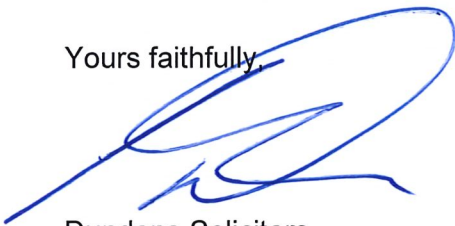
Attn: Board Chair Maureen Hilyard

Dear Sirs,

Re: Advice on Recent Issues and Disputes as to Governance and Note on Board Elections: Recent Issues and Disputes as to Governance

Please find the attached Counsel John Brewer's (i) the written Advice on Recent Issues and Disputes as to Governance and (ii) Note on Board Elections: Recent Issues and Disputes as to Governance, for your review.

Yours faithfully,



Dundons Solicitors
(CJD/cl)

Encl.

DotAsia Organisation Limited

Advice on Recent Issues and Disputes as to Governance

Key Facts

1. DotAsia Organisation Limited (“**DA**”) is a company incorporated in Hong Kong with liability limited by guarantee whose membership is drawn from regional organisations responsible for managing Top Level Domain (“**TLD**”) registries (“**Sponsor Members**”, of which there are currently 24) and community or non-governmental organisations in the Internet, information technology and telecommunications sectors (“**Co-Sponsor Members**”, of which there are currently 9). The 2006 formation and incorporation of DA was promoted by TLD registries responsible for .cn (China), .ir (Iran), .jp (Japan), .kr (Korea), .nu (Niue), .tw (Taiwan) as Sponsor Members and Asia Pacific Network Information Centre as Co-Sponsor Member.
2. DA’s principal activities comprise the operation of the .asia TLD, also the organization and support of community projects with charitable purposes intended promote Internet development and adoption in Asia Pacific. DA’s affairs are governed by the Companies Ordinance (Cap.622) (“**Ordinance**”), its memorandum and articles of association (“**Articles**”), confidentiality guidelines (adopted in July 2008, updated in September 2020, “**Guidelines**”) and four governance documents¹ and a core values and competence

¹ Board Governance Framework; Code of Conduct; Standard Operating Procedures for Finance & Procurement; Company Documents Director Request.

framework, collectively (“**Governance Documents**”) and adopted by the Board on 30 April 2020.

3. Membership of DA is open to entities capable of meeting the criteria for Sponsor Member or Co-Sponsor Member and Article 4 provides that applications for membership are considered and accepted at the discretion of the DA’s board of directors (“**Board**”).
4. Article 39 provides that Sponsor Members are entitled to nominate and elect up to 8 members, and Co-Sponsor Members are entitled to nominate and elect up to 2 members, of the Board. Article 31 provides that the chief executive officer (“**CEO**”) of DA for the time being also holds office as member of the Board by virtue of his appointment.
5. Article 37 provides that elected members of the Board (being all Board members other than the CEO) shall hold office for up to two years and then retire at DA’s annual general meeting (“**AGM**”) but are eligible for re-election. There is no limit to the number of two-year terms that may be served.
6. Article 40 deals with the manner in which members of the Board are elected and provides that if the number of candidates standing is greater than the number of vacancies then the election shall be determined by way of ballot and, in the event of an equality of votes, by way of lot.
7. Current Board membership comprises Nicole Chan, Billy Cheon, Maureen Hilyard, Alireza Saleh (elected by Sponsor Members in 2020), Lim Choon Sai and Tham Yiu Kwok (elected by Sponsor Members in 2019), Satish Babu (elected by Co-Sponsor Members in 2020), Tommy Matsumoto (elected by Co-Sponsor Members in 2019), along with CEO Edmon Chung.

8. Articles 74 and 75 provide that the Board shall have the benefit of the advice of an Advisory Council on policy matters and Co-Sponsor Members are entitled to appoint at least 11 members to the Advisory Council. Article 76 permits the Board to appoint distinguished individuals to fill Advisory Council vacancies should its number fall below 11.

Forthcoming Board Election

9. Five members of the Board were elected in 2019: Atsushi Endo, Lianna Galstyan, Lim Choon Sai and Tham Yiu Kwok (elected by Sponsor Members) and Tommy Matsumoto (elected by Co-Sponsor Members). Atsushi Endo resigned on 30 June 2020, Lianna Galstyan resigned on 24 November 2020² and each of Lim Choon Sai, Tham Yiu Kwok and Tommy Matsumoto continue in office until the conclusion of the 2021 AGM.
10. The forthcoming Board election timetable comprises the following steps forming key elements of a Board Elections Procedure for (“BEP”) for 2021 adopted by the Board on 16 December 2020 –
- Nomination Period – 28 December 2020 to 1 February 2021 (36 days)
 - Nominations Report Sent to Board – 3 February 2021
 - Notice of AGM Issued – 5 February 2021

² To the extent that there may be any criticism of these vacancies not having been filled (eg Tham Yiu Kwok’s email of 9 November 2020), such criticism would be groundless: there is no prescribed minimum number of directors and, provided that the Board is able to muster sufficient quorum of 6 members as required by Article 52 then the matter of filling vacancies for the duration of the unexpired terms of office of those who have resigned (and equally applicable to circumstances of removal) is a matter for the Board’s discretion and as is plainly stated at Article 64, “Any casual vacancy in the Board or a vacancy resulting from the removal of a Director under Article 63 may be filled... within ninety (90) days of the occurrence of such vacancy” (emphasis added). Indeed, on 24 May 2019 the Board chose to leave until the 2020 AGM the vacancy created by the resignation of Yong Yan Jiu. By contrast, casual vacancies arising in circumstances where the number of persons nominated for election immediately prior to the AGM is less than the number of vacancies in the Board must be filled by way of by-election held pursuant to Article 40(d).

- Voting Period – 5 February 2021 to 19 February 2021 (14 days)
- AGM & Announcement of Election Results – 28 February 2021
- New Board Assumes Office – 28 February 2021

11. Similar timetables have been set in past elections with around 35 days provided for the receipt of nominations, up to 14 days allotted for the processing of nominations followed by around 14 days provided for votes to be cast by way of ballot and up to 18 days for the counting of ballots before announcing the result at the AGM. One immediate observation is that these timetables are considerably more detailed and generous than the limited provision found at Article 40(b) and which states

“Not less than fourteen (14) days but not more than twenty-eight (28) days before the date appointed for the annual general meeting, there shall have been sent to the Board a notice in writing signed by the proposer and endorsed by the seconder of their intention to propose such candidate for election and also a notice in writing signed by that candidate of his willingness to be elected.”

12. Whether these detailed timetables actually conflict with the limited provision found at Article 40(b) is considered below.

13. The 2021 BEP in addition requires votes cast by ballot in the Voting Period to be reviewed by RSM, DA’s auditors, as appointed scrutineers in accordance with HKSRS 4400 issued by the Hong Kong Institute of Certified Public Accountants.

Complaints Received

14. Five principal grounds of complaint have been levelled against the Board and its directors, in particular the Chief Executive Officer. These are

Issue 1: Former Board member Joel Disini (“**Disini**”) has complained³ that RSM may not perform their scrutineer duties in the forthcoming Board elections with neutrality, also that terms of RSM’s appointment are unsatisfactory.

Issue 2: Current Board member Tham Yiu Kwok (“**Tham**”) has in recent months also begun to criticise the election procedure as conflicting with the provisions of Article 40(b).⁴ Tham has levelled more serious criticisms at the way in which the Board’s Executive Committee (“**Board Exco**”), formation of which followed adoption of the Board Governance Framework and the Governance Documents, operates.⁵ The initiative for and adoption of the Governance Documents itself followed attacks on DA’s integrity and governance⁶ levelled during the 2019 AGM in Daejeon, Korea on 24 February 2019.

Issue 3: Tham also complains⁷ the Board Exco has withheld information from other Board members, describes it as an inner circle practising a culture of opacity and secrecy and conniving with the CEO in his running of the Board and has called for challenge to “*unconstitutional acts and corruptions of the constitution by the CEO*”.

³ Email to CEO of Asia Pacific Top Level Domain Association, copied to *inter alia* DA’s auditors and legal advisors, 18 December 2020.

⁴ An observation he first raised during the 2020 AGM and recorded at Item 3.9 of the AGM minutes.

⁵ Email to *inter alia* CEO of Asia Pacific Top Level Domain Association, copied to DA’s auditors and legal advisors, 17 December 2020.

⁶ DA Secretariat email to members, 28 May 2020.

⁷ Email to *inter alia* CEO of Asia Pacific Top Level Domain Association, copied to DA’s auditors and legal advisors, 17 December 2020.

Issue 4: Both Disini and Tham have challenged the Board⁸ in regard to the proper allocation of costs incurred by DA in managing the affairs of its subsidiaries and generally in regard to the substantiation of expenses incurred by and reimbursed to the CEO on DA business.

Issue 5: Both Disini and Tham have criticized the way in which Board decisions have been taken and minutes of Board meetings have been drafted.⁹

15. These complaints have been made in the context of (a) Disini's perceived ambitions for election to the Board following his failure to gain re-election at the 2020 AGM, (b) High Court Actions launched by Disini's investment vehicle against DA, its subsidiary Namesphere Limited ("NS") the CEO and five members of the Board concerning cash investments made in NS and an intended joint venture between NS and a third party, and (c) a growing sense of distrust by Disini and Tham concerning the way in which the CEO administers the books and records of DA and NS. Almost all of these complaints are levelled implicitly, sometimes explicitly and personally, at the CEO.

16. Several of the Issues appear to have been given circulation within the internet community and are taking on the character of smearing tactics ahead of the 2021 AGM.¹⁰ The Issues may or may not represent a repeat of the steps which led to the adoption of the Governance Documents but they are being pressed directly on third parties such as DA's professional advisers

⁸ Disini's 18 December 2020 email to CEO of Asia Pacific Top Level Domain Association, copied to *inter alia* DA's auditors and legal advisors; Tham's 14 February 2020 email to the Board.

⁹ Disini's 24 December 2019 email to the Board; Tham's 24 December 2019 email to the Board.

¹⁰ Disini's 18 December 2020 email to CEO of Asia Pacific Top Level Domain Association, copied to *inter alia* DA's auditors and legal advisors.

and its own staff with oblique threats of legal action.¹¹ The manner in which the Issues are being pressed reveals two distinct but repeated (and disturbing) threads: Disini is unafraid of cherry-picking and twisting facts¹² and Tham advances legal misunderstandings from the sidelines while refusing to engage in meetings with fellow directors but expecting DA's lawyers to respond to him direct.

17. I have reviewed for the purposes of this advice the range of DA's constitutional and governance documents, along with relevant emails and supporting documents provided to me. I have listened to recordings of the October 2019 Board meeting and the 2020 AGM. I take the Issues in turn and set out how DA might best address and respond to the Issues in practical manner. I attach for that purpose a suggested note titled "*Board Elections: Recent Issues and Disputes as to Governance*" for circulation and publication if the Board thinks fit.

Issues 1 & 2 - Board Election Procedures

18. Article 40 dealing with the election of Board members provides that if the number of candidates exceeds the number of vacancies then the election shall be determined by way of ballot and, in the event of an equality of votes, by way of lot. No further details are prescribed and in circumstances where a ballot is required the Board has in elections up to and including those for 2020 sanctioned by way of BEP the more detailed practice of the Company Secretary dispatching to members by email ballot forms bearing discrete ballot numbers and serial numbers for return by email, all subject to a

¹¹ Email sent to DA's auditors' International Chief Executive and in which he stated "*We have no intentions of filing a lawsuit against your company (although we have considered it...*"; email of 24 December 2020 sent to Leona Chen-Birkner titled "*xmas greetings + litigation*" and in which he stated "*... it is not my intent or desire to involve you in this lawsuit*".

¹² Disini's email of 9 November 2020 to DA members wrongly alleges that steps to appoint Maureen Hilyard as NS director amounted to an attempt to replace Tham and failed to state that further shares to be issued by NS would also include an allotment to his own company, DotPH Domains Inc.

timetable in the nature of that appearing at paragraph 10 above. In anticipation of the 2020 Board elections the Board considered at its 9 January 2020 meeting¹³ whether to form an Elections Committee but resolved that, since the BEP for 2020 did not already provide for such role, an Elections Committee be convened to supervise Board elections from 2021 and onwards. I am instructed that the Board Exco¹⁴ subsequently determined to engage RSM, auditors to DA, as independent scrutineers to find whether (a) the ballot had been held according to the Articles, (b) emails containing ballots agreed with server log records, (c) additions of total votes cast in the ballot results were correct, (d) total votes cast summarized on working papers were correct, (e) vote details on working papers compared with votes emailed¹⁵ by voters, and (f) there were reasons for discrepancies, if any, after discussion with DA management. This engagement was not, as Disini has alleged,¹⁶ to “justify the results of the election”. The BEP for 2021 adopts similar procedures but with three further steps to improve transparency: first, management of the administrative work and communication with members for nomination and voting purposes previously handled by the Company Secretary will be outsourced to Fusion, a local CPA firm; second, the entirety of the BEP will be supervised by an Election Committee whose membership is drawn from outside DA; and third, steps taken by RSM as scrutineers will include direct verification with relevant members of the votes they are recorded to have cast in the ballot.

19. The Board’s power to sanction the BEP and related practice falls within the provisions of Article 46 which provides that the Board may make, amend

¹³ Minutes of 9 January 2020 Special Board meeting, item 5; the minutes record Disini and Tham as absent.

¹⁴ And not the CEO, as Disini has alleged in his emails to DA’s membership (18 December 2020) and RSM’s International Chief Executive; but I note that Item 3.6 of the 17 February 2020 AGM minutes states “*DotAsia management sought an audit by RSM*”.

¹⁵ From the 2021 BEP votes will be submitted online.

¹⁶ Email, 18 December 2020.

and repeal all such rules as it may deem necessary or convenient for the proper conduct and management of DA, provided that such rules are not inconsistent with the Articles. The BEP is intended to provide clarifications, interpretations and additional details for the implementation of Board Elections.¹⁷

20. Tham repeats¹⁸ his complaint previously advanced orally during the 2020 AGM itself that the BEP for the 2020 elections contravened Article 40(b). He writes¹⁹ of Article 40(b) “*specifying a nomination period*” of two weeks running from 28 to 14 days prior to the AGM during which nominations are to be made. Given that the BEP requested nominations to be made during the 5-week period running from 75 to 39 days prior to the AGM, he contends that the election of Board members in 2020 was invalid. Tham further complains that²⁰ failure to follow Article 40 and s.460 of the Ordinance is evidence of years of gross negligence and non-professionalism on the part of DA management.

21. The Board has consistently set a nomination period well ahead of the AGM in each year since the 2014 Board elections, perhaps earlier. The short question is whether this practice conflicts with Article 40(b). The short answer is that it does not.

22. The operative provision in Article 40(b) “*...there shall have been sent to the Board a notice in writing signed by the proposer and endorsed by the seconder... and also a notice in writing signed by that candidate...*” does not purport to prescribe a nomination period as such, nor does it prescribe when

¹⁷ Introduction, Board Election Procedures 2020.

¹⁸ Email, 18 December 2020; also email, 21 December 2020 to RSM.

¹⁹ Email, 21 December 2020 to RSM.

²⁰ Email, 24 November 2020.

nominations shall be made. Article 40(b) instead specifies who is to make (and accept) nominations and then the period of time in which the Board *shall be informed*. But Article 40(b) does not specify who is to inform the Board.

23. Had Article 40(b) specified that the proposer and seconder, also the candidate, are the persons required to send to the Board their written notices within this 14-day window then there would be no room for the Board to specify a timetable requiring proposers, seconders and candidates to send their notices any earlier. However, any election requires time in which to check the validity of nominations received and then to count ballots eventually received. An interpretation of Article 40(b) requiring the Board to receive nomination notices and acceptances from proposers, seconders and candidates within this 14-day window would not realistically permit much more than 7 days for voting. Given the nature of DA's membership organisations, this would hardly be a realistic state of affairs.

24. In my opinion the absences in Article 40(b) of any clear and definitive provision of a nomination period and of just who should send these notices to the Board leaves the Board entitled to sanction (as indeed it has) a more detailed procedure building on the bare simplicity of what is in Article 40(b). Paragraph 2.2 of the BEP closes with the following

“The nomination results, along with the nominations, secondings and candidacy acceptances, undersigned and endorsed via emails by the proposers, seconders and candidates respectively, as well as the voting results to be ratified will be submitted to the Board not less than fourteen (14) but not more than twenty-eight (28) days before the day appointed for the AGM.”

25. I am instructed that nominations for the 2020 Board elections were in fact submitted to the Board on 31 January 2020, being within the 14 to 28-day period preceding the 17 February 2020 AGM and as prescribed by Article 40(b).²¹

26. As regards BEP2021 paragraph 2.1 closes with the following

“The nomination results, along with the nominations, secondings and candidacy acceptances, undersigned and endorsed via emails by the proposers, seconders and candidates respectively (“Nominations Report”), will be submitted to the Board not less than fourteen (14) but not more than twenty-eight (28) days before the day appointed for the AGM.”

27. This is entirely consistent with the Board being informed in accordance with the requirements of Article 40(b).

28. Even if any of Tham’s criticism is remotely correct it is difficult to see where any prejudice has in fact occurred. Minutes of the AGM held on 17 February 2020 record *“A further question was raised on whether the raised concern amounted to any negative impact or unfairness to the elections. No discernible problem aside from the alternate interpretation of the Articles was identified.”* The same minutes also record Tham’s observation that new members admitted to DA in the weeks prior to the AGM would be denied rights to nominate and then vote on Board elections but then go on to confirm that no new members were in fact admitted during the material period. This particular complaint is in fact groundless: there is nothing

²¹ Submission was made along with preliminary results of voting, a situation which is hardly ideal since the Board ought to be informed of nominations prior to votes being cast but which has been remedied with effect from BEP2021.

remarkable about the fact that rights and obligations attached to membership of a company arise upon being admitted to membership and not when application is made to become a member. It does, however, prompt the suggestion that, as with membership entitlements to dividend and the exercise of voting rights in listed companies, the Board might usefully set a period of time, perhaps the entirety of the period from the commencement of nomination period to the date of the AGM, during which applications for membership shall not be accepted.

29. The BEPs set out a more complete approach towards the entirety of the Board election process and unless and until a *member* of DA seeks to impugn the 2019 and 2020 Board election results there is nothing in Tham's further assertion²² that he is (and by extension all other elected members are) in consequence "*an invalidly elected and invalidly appointed*" member of the Board.

30. It is DA's practice to invite members attending AGMs to ratify elections of directors. This is not only unnecessary, it risks creating conflict with the provisions of Article 32 which provides that Sponsor Members and Co-Sponsor Members each nominate and elect up to a certain number of directors, also with Article 40(f) provides

"Each Member of a category is entitled to a number of votes which is equal to the number of vacancies in the Board for such category, the election to the Board shall be made by way of ballot."

²² His email of 18 December 2020 suggests that all 10 elected members should be seeking re-election, presumably according to the strict letter of Article 40(b).

31. Ratification of Board election results presented to the 2020 AGM was sought by vote on a show of hands and in circumstances where relatively large numbers of members have already cast votes by ballot, a practice which I am instructed seeks to ensure compliance with Articles 31 and 32 but which in my opinion presents two risks: first, that votes cast by ballot are then made conditional upon ratification (and potential rejection) by a much smaller number of members taking the trouble to attend the AGM in person; second, that members of one category may choose not to ratify votes cast by ballot of the other category. Seeking ratification also questions the purpose of engaging scrutineers to supervise the election process. This additional step is unnecessary and should be abandoned: Articles 31 and 32 do speak of Board members being elected “*at the annual general meeting*” but Article 31 is expressly subject to Article 32 (reference to Article 35 and the election of chairman makes no sense) which in turn is subject to the more detailed provisions of Article 40 which require resort to voting by ballot - as opposed to acclamation or show of hands. Very strictly interpreted, Articles 31 and 32 could be said to require that the balloting of members be carried out *at the AGM* rather than beforehand. Addition of the words “... *to be carried out prior to the annual general meeting in accordance with procedures adopted by the Board and with results reported by the Board to the annual general meeting.*” to the end of Article 40(e) would remove any question or doubt.

32. Nonetheless, the Board should consider amending Article 40(b) to make clear provision for sufficient periods of time for all elements of an election to be carried out properly and so that future BEPs adopted are consistent with what is in the Articles. There is no need for Article 40(b) to entrench the entirety of the current procedural framework but it might usefully be amended to something along the lines of

“Board elections shall be conducted according to a procedure to be adopted by the Board commencing with (a) a period of no less than twenty-eight (28) days during which nominations signed by proposer and seconder and countersigned by the nominee are to be received by the Company Secretary, followed by (b) a period of up to fourteen (14) days allotted for the processing of nominations, (c) the Company Secretary sending to the Board a report of nominations received not less than fourteen (14) days but not more than twenty-eight (28) days before the day appointed for the annual general meeting, and, if the number of nominations exceeds the number of vacancies, then (d) followed a period of no less than fourteen (14) days during which votes are to be cast and a further period of up to seven (7) days for the counting of votes before announcing the election results at the Annual General Meeting.”

33. Tham’s criticism of failure to follow the requirements of s.460 of the Ordinance is wholly unfounded. This provision prohibits certain companies from electing two or more directors in general meetings by way of single or “block” resolution, instead of taking each election separately. It does apply to DA as a company limited by guarantee but it has no application in circumstances where DA elects directors by way of ballot or otherwise than by resolution in general meeting.²³

34. Disini has characterized²⁴ previous scrutineer work as being undertaken pursuant to terms of “a fairly unusual contract” subject to the proviso that procedures followed did not amount to an assurance engagement in the

²³ Indeed, since written resolutions in lieu of general meeting require the consent of all members it would be perfectly acceptable for such resolutions to elect directors by way of a block resolution as opposed to voting on them individually.

²⁴ Email, 18 December 2020.

nature of auditing standards. Disini has also characterized²⁵ the RSM engagement as intended to “justify” the election results.

35. There is no substance to either of these complaints.

36. First, the very nature of an assurance engagement is to express *matters of opinion*, whereas in an engagement pursuant to HKSRS 4400²⁶ findings are the “*factual results of the agreed-upon procedures performed*” and it is up to the engaging party to satisfy itself whether the procedures adopted are in themselves sufficient and satisfactory for the fact-finding purpose. There is no need to extend the scrutineers’ task to that of an assurance engagement: there were 23 ballots issued and 14 ballots returned in the last Board election with 51 votes cast and if the Board wishes to include an additional procedural element requiring the scrutineer independently to contact each party responsible for returning a ballot in order to confirm *as a matter of fact* that such party genuinely did so return it then that is a simple matter of amending the agreed-upon procedures to be performed. *It is not a matter of opinion.*

37. Second, the essence of any justification lies in giving good and satisfactory reasons in support of facts or as conclusion drawn from the facts whereas an engagement performed pursuant to HKSRS 4400 simply states the facts as they have been found after following agreed-upon procedures. Scrutineers’ work performed pursuant to HKSRS 4400 does not “*justify*” anything.

38. Disini further complains²⁷ that RSM cannot be expected to be neutral in the way they go about their work, his reasons being that he was unable to obtain from them photocopies of documents they had undertaken to deliver to

²⁵ Email, 18 December 2020.

²⁶ <https://www.hkicpa.org.hk/-/media/HKICPA-Website/Members-Handbook/volumell/hksrs4400r.pdf>

²⁷ Email, 18 December 2020.

Disini on behalf of the CEO in response to inquiries made by Disini when he was a Board member concerning allocations of DA expenses charged to NS and in which he has an investment interest, a complaint which is addressed more particularly at paragraph 66 below.

39. However, there is no mention of RSM in the email correspondence chain provided by Disini in support of this complaint, let alone any mention of the role they are supposed to have performed on the CEO's behalf. In any event, this complaint no longer has substance in light of the fact that the DA board agreed to the appointment (at the joint expense of DA and NS) of an accountant of Disini's choice to conduct a review to address those inquiries.²⁸ The Board then resolved²⁹ that Disini ought to have access to previous audited financial statements and further resolved³⁰ that, on account of his personal interest in the matter, provision of documents relating to NS issues should be conditional upon his signing a confidentiality agreement, also³¹ that upon completion of the independent accounting review Disini should receive all draft and final reports of inquiries in relation to those expense allocations.

40. That said, there are many other accounting firms capable of scrutinising an election which (to use 2020 as an example) concerned just 23 ballots dispatched and 14 returned to be counted and if the appointment of a firm other than DA's auditors will remove any perception of bias then this could be achieved at small cost. If the Board is minded to continue with RSM then

²⁸ The office of RSM chosen by Disini was their Philippines practice, Reyes Tacandong (see paragraph 46 below) and with whom he later fell into dispute; it may be this particular complaint confuses the respective work of RSM's Hong Kong and Philippines practices.

²⁹ Minutes of 24 & 25 May 2019 Board meeting, item 9.

³⁰ Minutes of 31 July 2019 Board meeting, items 9 & 10.

³¹ Minutes of 16 & 17 October 2019 Board meeting, item 5.

this ought to be made a matter for the members to approve at the AGM *in addition to* inviting members to approve their appointment as auditors.

41. It follows from my conclusions at paragraphs 24 and 27 above that RSM's finding as fact when carrying out their work as scrutineers that "*the ballot of directors' re-election was held according to the memorandum and articles of association*" is correct: nominations were sent to the Board on 31 January 2020, being at least 14 days but not more than 28 days prior to the AGM as required by Article 40(b). Tham's complaint in this regard is not made out and his assertion³² that "*all ten board vacancies are up for election*" is accordingly unfounded.

Issue 3 - Board Exco

42. The Board adopted *inter alia* its Corporate Governance Framework ("**CG Framework**") in April 2020 in response to attacks on DA's integrity and governance. The CG Framework confirms the Board governance structure as comprising committees of the Board dealing with community projects, finance and governance (all of which were created by Board decisions of 24 & 25 May 2019 in which Tham and Disini participated and to which all Board members were encouraged to join at least one),³³ the Board Exco (created by Board decision of 19 June 2019 in which Tham participated) and three Board Officers (Chairman, Board Secretary and Board Treasurer). The CG Framework specifies that if the Board chair is unable to preside at any meeting of the Board then that office may be assumed by the chair of either of the community projects, finance and governance committees.³⁴ The CG Framework does *not* identify the CEO as a Board Officer. In establishing its

³² Email, 29 December 2020.

³³ Permitted by Article 45; recorded at item 14 of the 24 May 2019 Board minutes.

³⁴ Board Governance Framework, section 2.

committees (other than the Board Exco) in May 2019 the Board resolved unanimously³⁵ that the CEO be *ex officio* member of each.

43. The CG Framework lists the responsibilities of the Board chair (section 3), the Board (section 4), Board committees (section 5), the Board Exco (section 6) and the three Board committees (sections 7, 8 & 9), along with articulating procedures for the election of the Board chair and other officers.

44. Membership of the Board Exco comprises the chairs of the Board and each of the other committees and its responsibilities include oversight of the management of DA's business and affairs, seeing that Board policies are implemented and that the Board maintains good governance practices and enforcing strong internal controls and financial management. Board Exco meetings are convened as and when necessary and minutes are to be posted to DA's website as a matter of public record.

45. One obvious feature of the CG Framework is that the role of CEO is not authorized to manage any part of DA's business in his own right as officer, nor is he a voting member of the Board Exco. The Board has resolved³⁶ that the CEO participate in Board committees other than the Board governance committee unless otherwise requested. The CEO is granted power to approve on his own expenditure not exceeding US\$10,000 per item and in any event not exceeding US\$20,000 in any month,³⁷ also to instruct transfers and payments to third parties not exceeding US\$10,000 per transaction.³⁸

³⁵ Tham and Disini participated in this resolution.

³⁶ Minutes of 24 May 2019 Board meeting, item 8.7.

³⁷ Standard Operating Procedures on Finance & Procurement, §2.

³⁸ Standard Operating Procedures on Finance & Procurement, §3.

46. Tham complains³⁹ that the Board Exco withholds information from remaining members of the Board. As example, he cites the matter of legal advice rendered to the Board in February 2020.⁴⁰ Tham has also complained⁴¹ of the Board Exco filtering information to which the Board is entitled. This complaint was expressed on 16 October 2020 during the Board's October meeting in relation to receipt of a report commissioned from Reyes Tacandong & Co ("**RT**" and the "**RT Report**") and which Tham characterized as a part of DA's books and records to be inspected according to Article 67. However the Board's decision,⁴² Tham dissenting, was that the RT Report be received and considered by the Board Exco prior to circulation of all drafts and final version among the full Board and NS stakeholder Disini. Further, I am of the opinion that the RT Report does not fall within the term "books of account" found at Article 66 and is instead in the nature of an audit *of* those books of account.

47. Tham complains⁴³ that the Board's decision of 29 October 2020 to balance the extent of detail recorded in Board minutes with the commitment to transparency amounts to a severe restriction on Board members' access to books of account (sic). The complaint is likely directed at access to DA's *books and records* but even so there is no substance to this complaint since all Board proceedings are recorded and, regardless of how much or how little of those proceedings is reflected in Board minutes all Board members remain entitled to access and listen to the original recordings of those meetings.

³⁹ Email, 18 December 2020.

⁴⁰ Email, 24 November 2020 in which Tham alleges that legal advice dated 28 February 2020 had never been circulated to Board members at large.

⁴¹ During the October Board meeting on 16 October 2020.

⁴² Minutes of 16 & 17 October 2019 Board meeting, item 5.2.

⁴³ Email, 24 November 2020.

48. In April 2020 the DA Board adopted as part of its corporate governance initiative a “Company Documents Director Request Process” (“**BFC-002**”) which provides guidance as to how a Board member might inspect and obtain copies of DA’s documents. Records related to transactions in respect of which a Board member is signatory are to be provided as a matter of course, failing which upon request.⁴⁴ Inspection of other records requires Board approval and this will be sought once the requesting Board member has identified what is sought to be inspected and the rationale for inspection.⁴⁵ The guiding principle is that the Board will permit inspection and copies to be taken unless the Board has reason to believe that the requesting Board member intends to use the material sought in a manner constituting an abuse of confidence and to injure DA.⁴⁶ Materials provided in response to an inspection request fall for protection as confidential information.⁴⁷

49. The Board’s policy in this respect is not entirely consistent with that found at common law and which provides that a director’s right of access to the generality of company papers flows from his office and *need not be justified or explained*: the right exists in order that he may go about fulfilling his duties.⁴⁸ This common law right is subject to the court’s power to restrict its exercise in circumstances where the company can show that it would be abused and concerns circumstances where directors of companies incorporated with share capital are tasked with supervising the management of the business, whereas DA is in the nature of a community organization whose directors are geographically and functionally distant from its operations and drawn from member organisations whose own purposes and

⁴⁴ Paragraph 1 of the Request Process.

⁴⁵ Paragraph 2 of the Request Process.

⁴⁶ Paragraph 2 of the Request Process.

⁴⁷ Paragraph 4 of the Request Process.

⁴⁸ Conway v Petronius Clothing Co Ltd [1978] 1 All ER 185.

business might routinely conflict with that of DA and the requirement that a Board member first identify the rationale for any requested inspection is arguably entirely consistent with guarding against the danger of such conflicts.

50. The common law right of inspection is supplemented by a statutory provision⁴⁹ requiring DA to ensure that the specifics of its accounting records are open to inspection by Board members at all times, free of charge a Board member is not required to justify any claim to inspect.⁵⁰ The courts have held that exercise of that right does not operate without regard to the realities affecting the conduct of a particular company's affairs and in circumstances where a Board member cannot demonstrate that particular papers sought to be inspected actually exist *or that he has been improperly prevented from inspection* then the court will not grant him an order.⁵¹ These "realities", however, do not appear to concern any special or particular nature of a company's governance and DA would remove the prospect of dispute over a Board member having to justify and explain if BFC-02 were amended

~~1.1 Records~~ Supporting documents related to transactions for which a Director is either an approving authority or a signatory ~~for~~ shall be provided, ~~by default~~ if so requested by the Director, as a matter of routine and otherwise ~~or provided~~ upon request.

~~2.1.2 State the purpose or rationale for such request~~

51. In any event, Tham may by now have been provided with copies of all legal advices rendered to the Board but if there is anything in Tham's complaint

⁴⁹ Companies Ordinance, s.374.

⁵⁰ *Re Fullerton Healthcare Group Ltd* (unrep, HCMP 2628/2017).

⁵¹ *Re Matsue Ltd* (unrep, HCMP 2667/2011).

that he was not given copies then that is a matter which should be remedied forthwith.

52. Mention of the court refraining from assisting where a company's prevention of inspection was not "improper" necessarily means that there may be circumstances in which a company is entitled lawfully to refuse a Board member from exercising his right to inspect accounting records.

Unsubstantiated speculation that a Board member may not abide by his duties of confidentiality to DA would of itself not amount to good reason but where there is evidence to suggest that a member of the DA Board or a director of any DA subsidiary is in the habit of failing to fulfil such duties of confidentiality (or misusing confidential information disclosed) then this would constitute grounds for seeking redress against the individual in respect of damage already caused and it may also be good grounds to refuse outright further inspection or provision of information.

53. As first step, DA should remind Board members of their duties prior to disclosing or sharing confidential information. As second step, it may be practical to adopt a restrictive manner to such disclosure or sharing, perhaps presenting the information during online meetings, so that such information may not be retained and abused. As third step, the Board may choose to restrict discussion of particularly sensitive or confidential information to a committee, either to the Board Exco or to some *ad hoc* committee formed for the purpose. This is a common feature of listed companies when boards are contemplating acquisitions or being acquired and guards against inadvertent leak of inside information.

54. Tham has also complained⁵² that while other members of the Board are left in the dark, senior DA staff are kept informed. To the extent that this arises in order that staff may carry out their administrative duties then keeping them informed cannot be criticized.

55. Tham also complains,⁵³ *“By agreeing to the Board Governance Framework, one surrenders powers of the board of directors conferred by the Articles of Association of DotAsia Organisation for its proper governance to the rule of group of four.”*⁵⁴ This is, given the provisions found in the Framework at paragraph 4.2 (responsibilities of the board of directors) and paragraph 6.1 (responsibilities of the board executive committee), a nonsense. The Board remains responsible for the governance of DA and while it has *delegated* certain day-to-day oversight powers to the Board Exco it remains empowered to recover the same at any time: it has *surrendered nothing*.

56. More pertinently, DA is an incorporated company and distinct legal entity and not a partnership of individuals. Tham was a member of the DA Board in April 2020 when the CG Framework was adopted and, unlike the position of partner in a partnership,⁵⁵ he shares collective responsibility with other members of the Board for the consequences of the Board’s decision, *whether he participated in it or not*. Collective responsibility has two main components: first, that directors should be able to have free and frank discussions prior to coming to a collective decision, also that such discussions should remain confidential; second, that once a position has been

⁵² Email, 18 December, 2020.

⁵³ Email, 12 November 2020.

⁵⁴ Tham’s email of 12 November 2020.

⁵⁵ Lindley & Banks on Partnership (18th ed) at §15-09: *“What is more questionable is whether a partner can, by absenting himself from a meeting, exercise an effective power of veto. Although this might not be permitted in the case of a company, the current editor considers that the court cannot properly override a partner’s rights in this way.”*

agreed all directors are expected to abide by that position and support it, otherwise resign their office. If Tham was unhappy with the decision at the time and remains unhappy now and feels unable to support it as member of the Board then the Board should invite him to resign.

57. Similar considerations apply to matters concerning subsidiaries such as Namesphere of which Tham is director: notwithstanding the fact that he has begun repeatedly to take the position that he will not attend any meetings of the Namesphere directors Tham is nevertheless entitled to be kept informed of writs received, notices of intention to enter judgment, draft defences, other pleadings and generally to be kept informed of the progress of litigation involving Namesphere for as long as he remains director.

Issue 4 – Allocation of DA Costs, Reimbursement of CEO Expenses

58. At the June 2019 Board meeting and against the background of Disini alleging that US\$1.5 million had gone missing from NS⁵⁶ Tham requested the CEO to provide *all* Board members with soft copies of expense reports and allocation of staff costs. The Board resolved that such matters should be considered by the Board finance committee upon formation⁵⁷ and this committee subsequently expressed concern with the request.⁵⁸ At its 12 September 2019 meeting the finance committee noted current reimbursement practice to be against a report with descriptions but not against receipts and determined while more detailed descriptions should be included it was not necessary to provide receipts.⁵⁹

⁵⁶ An allegation Disini continues to press by email to DA members at large, eg 9 November 2020.

⁵⁷ Minutes of 19 June 2019 Board meeting, item 10.

⁵⁸ Reported at item 10.3 of the minutes of 31 July 2019 Board meeting.

⁵⁹ Recorded at item 4 of the minutes of the 12 September 2019 finance committee meeting.

59. This particular decision was, sensibly, not adopted by the Board at its October 2019 meeting.⁶⁰ While Tham's complaint that drafts of *ad hoc* financial reviews performed on DA's accounting records fall within the description of "books of account" found at Articles 66(d)⁶¹ and 67 (and should therefore be made available to all directors without restriction)⁶² is misguided, his complaint at being denied access to DA's books of account and in particular its accounting records is well founded: indeed, it would be negligent of him or any other signatory to exercise bank signing powers unless satisfied as to the genuineness of the expense incurred.⁶³ I am instructed that he is now routinely provided with copies of relevant receipts when he is asked to approve expenditure or exercise bank signatory power.

60. Responsibility for establishing the genuineness of any expense to be paid or reimbursed is shared with DA's full-time staff. In August 2019 the finance committee reported⁶⁴ that there had received from Disini a request to reimburse him⁶⁵ for incorporation of new companies Dotspa Limited and NSPH Limited but it has since transpired that NSPH was not then incorporated, a fact confirmed by Disini's lawyers over 12 months later.⁶⁶

61. It is against that background that Tham has alleged⁶⁷ certain of the CEO's travel expenses to be questionable in that they have not been properly documented - the expenses were reimbursed to the CEO against credit card bill *statements* as opposed to *receipts* for actual transactions. Criticism of

⁶⁰ Minutes of 16 & 17 October 2019 Board meeting, item 8.6.

⁶¹ "all other matters necessary to show a true and fair view of the financial state and condition of the Company."

⁶² Recorded at item 6.2, of minutes of 21 November 2019 Board meeting.

⁶³ *Dorchester Finance Co Ltd v Stebbing* [1989] BCLC 498.

⁶⁴ Reported at item 6 of minutes of 19 August 2019 finance committee meeting.

⁶⁵ The request purported to be supported by 12 June 2019 fee notes rendered by KSHK certified public accountants in respect of the incorporations of NSPH Limited and DotSPA Limited, disbursements and associated annual fees for 2019/2020.

⁶⁶ Disini's lawyers wrote to DA on 25 August 2020 stating that NSPH had not been incorporated as of that date.

⁶⁷ Email, 14 February 2020.

similar vein appears in the draft RT Report⁶⁸ regarding US\$14,354.83 of unsupported travel expenses incurred by business development officer Michael Lu on NS business.⁶⁹

62. DA's position on this matter is now reflected in the "*Company Documents Director Request Process*" and addressed at paragraphs 48 to 53 above. Paragraph 1 of that process now provides that adequate supporting records shall be provided to a director when exercising signatory responsibilities and provided such practice is followed then there ought to be no repeat of such allegations.

63. Somewhat related to this issue, Tham has queried⁷⁰ reimbursement of US\$17,000 "owed to directors", a matter he then raised at the 2020 AGM and which was answered as CEO travel expenses which had not been reimbursed as of the 30 September 2019 financial year end. Tham's email query further alleges by way of splitting the sum into two items each below US\$10,000 the CEO *could have* signed off so as to reimburse himself.

64. This particular complaint comes against the background of repeated remarks by Tham in board meetings⁷¹ warning of internal control weaknesses on account of the CEO's partner being employed as Finance & Compliance Officer.

65. In April 2020 the Board adopted "*Standard Operating Procedures on Finance & Procurement*" which distinguished approval limits for expenditure and bank signatory powers. The CEO is permitted to approve recurrent expenditure items of up to US\$10,000 and any one signatory

⁶⁸ RT Report, Executive Summary, item 6.

⁶⁹ The issue was not that the expenses were actually incurred but whether they were incurred on NS, as opposed to DA, business.

⁷⁰ Email, 14 February 2020.

⁷¹ October 2019 in particular.

(including the CEO) is permitted to exercise signing power for sums up to US\$10,000. While it is ultimately a matter for the Board to be satisfied that these limits are sensible and practical in the context of DA's operations the procedure does not appear to prohibit individuals from approving reimbursement of their own expenses or authorizing payments to themselves. This is a fundamental feature of robust internal control practice and ought to be considered, stated and implemented so that there can be no further criticism or suspicion raised.

66. DA has to-date accounted for NS matters by way of branch accounting in its own books because of the difficulties encountered in having NS open its own bank account. Disini complains⁷² that he had identified up to US\$1.5 million of DA expenses having been charged to NS or its investments (“**NS Group**”) and, through his lawyer's letter⁷³ alleged that much of the spending recorded to NS Group was not in fact properly attributable to NS Group.

67. On 2 July 2019 DA instructed RT to undertake an accounting review for period commencing with the incorporation of NS⁷⁴ to 7 June 2019, a period exceeding 7 years and to propose adjustments (if any) to the NS Group cash balance as of 7 June 2019.

68. The draft form of RT Report⁷⁵

(a) observed⁷⁶ that over that 7-year period allocations of US\$555,522 of staff costs and US\$22,320 of office costs to NS Group agreed in DA Board

⁷² Email, 18 December 2019.

⁷³ Letter from Peter Dengate Thrush, 20 May 2019.

⁷⁴ 21 March 2012.

⁷⁵ Dated 20 September 2019.

⁷⁶ RT Report, Executive Summary, item 4.

meetings at which NS stakeholders were present might, in the event of more detailed data to support actual time spent, require adjustment;⁷⁷

(b) found⁷⁸ that US\$14,346 of travel expenses charged to NS Group in respect of business development officer Michael Lu from September 2014 to May 2015 were not properly supported by appropriate documents;⁷⁹

(c) found⁸⁰ that during the 12 months ended January 2019 some US\$21,939.53 of expenses incurred by DA director Tommy Matsumoto (whose time applied to NS Group matters was rendered as volunteer and who was not approached by RT with their queries on his travel expenses) charged to the NS Group should be reimbursed to the NS Group by DA; and

(d) concluded that the DA Group cash balance of (US\$607,178.91) as of 7 June 2019 should be adjusted to (US\$570,893.55 on account of findings (b) and (c) above.

69. Intervention by Disini and his attorneys has since prevented RT from issuing a final report.⁸¹

70. It is not clear from the facts presented to me, but to the extent Disini as personal investor in NS (to the extent of US\$180,000) has been at all concerned that there has been wilful or negligent practice among DA management to have NS Group shoulder costs that should properly be

⁷⁷ Adjustment might of course be to the detriment of NS and not just to NS's benefit.

⁷⁸ RT Report, Executive Summary, item 6 and listed in detail at Appendix E.

⁷⁹ This does not of itself prove that the expenses were not properly incurred.

⁸⁰ RT Report, Executive Summary, item 5 and listed in detail at Appendix E.

⁸¹ Having been given sight of RT's draft engagement letter and final form of engagement letter, both of which were addressed to DA and Namesphere as client, Disini formed the view that RT nevertheless had entered into a client relationship with his own company, DotPH Domains Inc and demanded RT to cease further work.

accounted for as DA costs then such concern does not sit well with the fact that the CEO's personal investment (initially of US\$200,000 and later increased to US\$220,000) in NS Group *exceeds* that sum. Indeed, if there were to have been any advantage gained in causing a mis-allocation costs and expenses then this would have been achieved to the benefit of NS Group and to DA's detriment, the very opposite of what was found.

71. In any event, the sooner that measures are taken to have NS open its own bank account (a step which, if it has not already been taken, may now be accomplished following the appointment of an additional director so as to overcome the deadlock created by Tham's refusal to engage) so that accounting for its affairs is no longer recorded as branch account within DA's accounts, the less room there will be for risk of misperception or suspicion.

Issue 5 – Board Decisions & Minutes

72. Tham complains⁸² that DA Board meetings have not been convened with sufficient notice, also that Board papers have not been circulated with sufficient notice. He cites the 21 and 14 day requirements, respectively, found at Article 54. Tham then employs his interpretation of the requirements of Article 54, particularly as regards circulation of Board papers, in support of more general complaints that Board meetings have not been validly held in recent months and, in consequence, decisions taken – including the election of the current Board chair – are invalid.⁸³

⁸² Emails, 9 & 24 November 2020, 11 & 16 December 2020.

⁸³ Tham's email of 16 December 2020 in particular, addressed to DA's auditors, threatens to file complaints with the accountancy regulator for "*probable professional negligence*" and notifies auditors and legal advisers that recent Board meetings are illegitimate.

73. Articles dealing with proceedings of the board of directors begin with Article 51 which provides “*The Board may meet and regulate its business as it thinks fit.*” This is in my opinion a general enabling provision to be read without restriction and to suit the Board’s circumstances from time to time. Those 21 and 14 day requirements at Article 54 concern the particular purpose and circumstances of Article 54, being those exceptional instances where a Board member takes it upon himself to convene a particular Board meeting and do not bind the Board in respect of its meetings generally.⁸⁴

74. Tham is director of Namesphere⁸⁵ whose affairs have of late required it to consider how best to (a) respond to a High Court action in which it is named as nominal defendant only, (b) respond to a High Court action in which it is named as defendant and at risk of costs, (c) allot further shares to investors whose funds have been held on account by DA for several years, and (d) establish separate banking facilities in order to avoid relying on DA to record its accounting transactions in its own books as branch accounts.

75. Tham complains⁸⁶ that steps taken by DA to cause Namesphere to enlarge its share capital and appoint a further director are procedurally unsound, while at the same time he chooses either to absent himself from meetings of the Namesphere board or abstain from participating in decisions, claiming⁸⁷ that “they” (presumably the DA Secretariat) make all the decisions and only ask him to rubber-stamp, he does not wish to take any responsibility for NS, it is meaningless to ask him to rubber-stamp and he is not interested at all -

⁸⁴ Tham’s misunderstanding of the purpose of Article 54 has even been extrapolated to notices of NS board meetings which he asserts should also be convened with at least 14 days’ notice, whereas article 65 of NS’s articles states “*The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit.*”

⁸⁵ Appointed in July 2015 in specifically in order to enable the opening of a bank account but which could not in fact be achieved.

⁸⁶ Emails, 24 August 2020, 16 October 2020 and 9 November 2020.

⁸⁷ Quoted in DA email to solicitors, 13 May 2020.

“所有野佢地都決定晒，叫我黎都係黎做橡皮圖章㗎啦我唔想為 Namesphere 負上咩責任，叫我做橡皮圖章都無意思，not interested at all. 有咩好傾丫，無咩好傾。”

76. In the circumstances of private and public companies with share capital this kind of conduct – sniping from the sidelines while refusing to engage and precipitating deadlock - would be intolerable and a controlling shareholder would be entitled to remove such a director and replace him with an individual willing to fulfil his duties. However, DA is in the nature of a community organization and since Tham was elected to office by members of a similar background and interest it would be imprudent to bring his office to a premature end. Tham has also begun to circulate his complaints more widely⁸⁸ and is possibly seeking to provoke escalation. DA is better advised to work around Tham by appointing additional directors as required so that Namesphere’s affairs can be properly administered in spite of his refusals.

77. Tham has complained⁸⁹ that minutes of DA Board meetings fail to reflect correct or complete records of proceedings and that the CEO has distorted matters as recorded in minutes of the October 2019 Board meeting in particular. He has also complained⁹⁰ that the minutes of the NS board meeting he attended failed to include annexes substantiating his views.

78. Other than presenting a complete, verbatim account there is no satisfactory formula to be adopted when drafting minutes of any meeting. Minutes are in essence a record of decisions taken, along with – where background explanation is required - any materially relevant facts presented and

⁸⁸ Emails, 17 & 18 December 2020.

⁸⁹ Email, 24 December 2019 re October 2019 Board meeting minutes.

⁹⁰ Emails, 20 August 2020 and 24 November 2020.

discussed,⁹¹ and not a record of every nuance or particular view expressed. If persons present at a meeting speak at risk of their full and frank views finding their way into the record (which, in the case of DA is a very public record) then this will inhibit discussion and, in turn, the quality of decision making.

79. The DA Code of Conduct states, “All business undertaken by the Board is confidential.”⁹² This requirement has to be understood along with the fact that DA is in the nature of a community organization practising a high degree of transparency and posts minutes of Board meetings to its website and hence in the public domain. If Board members are to feel secure in voicing opinions fearlessly then they must be afforded some degree of protection when it comes to the prospect of those opinions being recorded in Board minutes.

80. Current arrangements for the writing of Board minutes commence with the Secretariat preparing an initial draft for circulation among Board Exco members and, adopting any changes made at that stage, the minutes are then circulated to the Board as a whole. One of Tham’s complaints made at the October 2019 Board meeting⁹³ is that it is difficult for Board members properly to consider and approve Board minutes unless they are circulated *soon after* a meeting instead of *soon before* the next meeting.

81. There is force in this criticism, not only from the common sense perspective that memories are freshest in the immediate period following a meeting but

⁹¹ Where such facts or other materials are actually discussed at the meeting: it is not in order to include in minutes of a meeting materials that never featured at the meeting.

⁹² Code of Conduct, §3.4.

⁹³ At 09:35 on 16 October 2019.

from a perception perspective.⁹⁴ The Board Exco's principal function is that of exercising oversight powers on behalf of the full Board so that the Board retains the ability to act between Board meetings. Reserving to itself the role of approving and presenting minutes to the full Board for final approval risks being perceived as the kind of "inner circle" function of which Tham has made allegation. Tham did participate in the May 2019 decision to form the governance, finance and community projects committees (although he has chosen not to join any of them) and did participate in the June 2019 decisions to form the Board Exco. I am instructed that a change in attitude on his part was evident by late 2019 when he objected to drawing up a Board Code of Conduct. It is also the case that although Tham originally supported the proposal that Board members furnish Statements of Interest (primarily for purposes of posting their profiles to DA's webpages) he has subsequently resisted the idea and fallen back on the legalistic (and entirely different) matter of "declaration of interest in material contracts" as required by Article 60.

82. The matter of Statements of Interest to be collected from Board members and posted to the DA website began as an action item noted in the May 2019 Board meeting. In the June 2019 Board meeting the minutes record⁹⁵ that the CEO would develop a template Statement of Interest from the ICANN example and Board members would provide information using that template. Minutes of the July 2019 Board meeting noted⁹⁶ that Statements of Interest remained outstanding from Tham and Disini. Tham has since resiled⁹⁷ from furnishing a Statement of Interest and falls back on the strict letter of Article

⁹⁴ In fact at its November 2019 meeting the Board decided to defer approval of the October 2019 Board minutes until the December 2019 Board meeting.

⁹⁵ At item 2.

⁹⁶ At Item 3.

⁹⁷ Minutes of 16 & 17 October 2019 Board meeting, item 3.

60 which addresses interests in contracts and relationships with DA, something else entirely.⁹⁸ In discussion at the October 2019 Board meeting Tham stated that he “would not be dictated to” on the matter.

83. Minutes of meetings are more typically drafted for the Chairman by the meeting secretary and according to his style and practice as to how much or how little to record and whether to attribute views to particular members present (“*Mr Chung stated...*”) or resort to use of the third person (“*Some members felt that...*”). Notwithstanding the Board chair’s function in working collaboratively with the CEO and, implicit at paras 3.3, 3.4 & 3.5 of the Board Governance Framework, responsibility for presenting draft minutes of meetings of the Board, I recommend that the Framework ought to state clearly that draft minutes are prepared at the Board chair’s instructions for prompt circulation among all Board members and then presented by the Board chair at the next meeting their approval and *without* first being considered by the Board Exco.

84. Having listened to recordings of the October 2019 Board meeting and 2020 AGM I am not convinced of Tham’s complaints about minutes failing fairly to reflect the proceedings but that is ultimately a matter for the Board and it is in any event the case that the October 2019 Board meeting minutes were approved by the Board at its 19 December 2019 meeting (at which Tham was not present).

85. Tham has complained⁹⁹ that proposed resolutions to receive applications and allot shares were embedded in draft meeting minutes for the special DA

⁹⁸ Tham’s profile is, however, posted on the DA website at <https://www.dot.asia/dotasia-organisation/community-governance/> and so it appears that any dispute concerns updates as opposed to furnishing a statement as such.

⁹⁹ Email, 24 August 2020.

Board meeting called 28 days previously and sent on 29 June 2020, on the eve of the special Board meeting, claiming this repeats previous instances, e.g. 19 December 2019 when the CEO sent his version of (previous) minutes prior to the Board meeting being held 1.5 hours later and the “distorted” 19 October 2019 board minutes were “routinely approved” even though no-one came forward with evidence of having seen the CEO’s declaration of relationship. There is nothing to this complaint: in the recording of the October 2019 Board meeting it is clear that the Board chair (at the least) was aware of the CEO’s relationships.

86. Tham’s 24 August 2020 email also complains that “responsible employees” were professionally negligent for not having filed share allotment with Registrar of Companies at the time of DA’s sweat equity subscription for shares in NS. There is nothing to this complaint either: share allotments are only to be filed following board resolution to allot shares and although it would with hindsight have been desirable for the DA Secretariat to have been pro-active and taken advice as to how best the various cash and sweat equity investments in NS were to be perfected *at the time*, unless and until the NS board (membership of which included Tham) resolved to allot further shares in NS there was nothing the DA Secretariat could file.

87. Tham’s 24 August 2020 email further complains that “responsible employees” were professionally negligent for not having enforced the CEO’s US\$20,000 deposit for shares on 28 September 2018.¹⁰⁰ Again, this is a matter of how pro-active Secretariat was expected to be. All of the cash sums deposited as intended investments in NS remained fully accounted for until such time as shares were eventually allotted.

¹⁰⁰ This sum was assumed from the original commitment of Elaine Cheng and in addition to US\$200,000 paid and received on or about 26 April 2012.

88. Tham's suggestion in his 24 August 2020 email that shares due to DotPH in respect of its intended subscription can instead be transferred from DA's existing holding fails to acknowledge the reality and facts of the matter, that Board discussions in 2012 focused on steps being taken for NS to issue further shares (and so raise substantial additional capital) rather than for DA to sell parts of its shareholding (in which case *no additional capital* would be raised by NS).
89. Tham's 24 August 2020 email finally expresses doubt as to the validity of the proposed resolutions¹⁰¹ on account of inadequate time given to consider. This complaint is groundless: Tham did not make himself available to attend that meeting and it is a matter for those who were present to complain, if they are minded to do so, that they had inadequate opportunity to give the proposed resolutions proper consideration. There is no evidence of this.
90. Tham has taken issue¹⁰² with matters to be addressed at the 27 August 2020 online Board meeting and asked for his disapproval to be recorded in respect of the entire set of draft audited accounts for the year to 30 September 2019 because of what he regarded as defective pages in the NS audited accounts, also that the NS & Namesphere Holdings Limited ("NSH") accounts notes did not disclose shareholding issues (arrangements to acquire shares or debentures) and legal disputes. Tham, along with the CEO, is director of NS as well as NSH and rather than attending the DA Board meeting in order to express and take discussion on these views he regretted he could not attend.

¹⁰¹ DA as sole shareholder of NS merely to invite the NS board to alter the share capital of NS and invite applications for further shares.

¹⁰² Email, 26 August 2020,

91. Tham is forensically correct that the term “board of directors” appeared at Note 12 to the NS accounts instead as “broad of directors”. This is hardly a matter of any moment.

92. The NS and NSH draft directors’ reports stated that at no time during the year (being the year ended 30 September 2019) were these companies or their holding companies or fellow subsidiaries party to arrangements to enable the directors to acquire benefits by means of the acquisition of shares¹⁰³ a matter which concerns the matter of directors’ interests and *not* the issue of shares *per se*. Had it been the case that either of NS’s (or NSH’s) directors (and the criticism appears levelled squarely at the CEO, rather than Tham himself) had been granted awards of shares, or grants of options to acquire shares, in either NS, NSH or DA during the year in question then this would be a matter requiring disclosure in the directors’ reports of NS, NSH and DA.

93. DA is incorporated by guarantee and so whatever benefits the CEO enjoys cannot have been in the nature of shares in DA – *there are no such shares, nor is there any prospect of such shares being issued*. There is no evidence of the CEO being awarded shares, or grants of options to acquire shares, in either NS or NSH. There is evidence that from 2012 the CEO had agreed to subscribe for shares in NS and as and when such shares are in fact allotted then that will be an event requiring disclosure in the directors’ report of NS (but not NSH, nor DA).¹⁰⁴

94. Tham’s criticism that NS ought to have disclosed the fact of a legal dispute can be viewed two ways. First, although the audited accounts in question are for the year ended 30 September 2019 it is the case that post-balance sheet

¹⁰³ A disclosure requirement triggered by the s.3, Companies (Directors’ Report) Regulation, Cap.622D.

¹⁰⁴ See s.5, Companies (Directors’ Report) Regulation, Cap.622H.

events, *if material*, ought to be disclosed. Second, and more pertinent, is the fact that NS's status as 2nd Defendant in proceedings commenced by Disini's British Virgin Islands company in HCA 469/2020 commenced in March 2020 is (as that claim is currently pleaded) entirely nominal and for the purposes of enforcing any judgment against DA as 1st Defendant. Indeed, NS is not at risk of costs and its board has determined not to contest the action. The matter is not material and did not require disclosure.

95. By emails of 20 November, 4 December and 11 December 2019 Tham complained that steps taken by DA to appoint a further NS director were of no effect.

96. These steps followed repeated invitations from the DA Secretariat to Tham to participate in NS board meetings for the purposes of considering the writ in HCA 1767/2020 and to appoint an additional director, invitations Tham has either ignored or rejected outright. DA as sole member of NS was in receipt of cash deposits intended for investment in NS by way of issue of additional shares. NS is at risk of costs in HCA 1767/2020 and it would be a dereliction of duty on the part of NS directors if they were to fail to consider how to respond to that action. Steps taken by DA as sole member of NS to cause an increase of share capital, allotment of further shares and the appointment of a further director were in my opinion taken for good reason and followed relevant provisions of the Ordinance.

John Brewer
Pacific Chambers
6 January 2021

A handwritten signature in black ink, appearing to be 'John Brewer', written over the typed name and date.

DotAsia Organisation Limited

Board Elections: Recent Issues and Disputes as to Governance

1. Membership of DotAsia Organisation Limited (“DA”) is drawn from regional organisations responsible for managing Top Level Domain registries and community or non-governmental organisations in the Internet, information technology and telecommunications sectors.
2. Sponsor Members are entitled to nominate and elect up to 8 Board members and Co-Sponsor Members are entitled to nominate and elect up to 2 Board members, all of whom shall hold office for up to two years and then retire at DA’s annual general meeting (“AGM”) but are eligible for re-election. There is no limit to the number of two-year terms that may be served. The chief executive officer (“CEO”) for the time being also holds office as member of the Board by virtue of his appointment.

The 2021 AGM & Forthcoming Board Election

3. Five members of the Board were elected in 2019 for 2-year terms ending in 2021: Atsushi Endo, Lianna Galstyan, Lim Choon Sai and Tham Yiu Kwok (elected by Sponsor Members) and Tommy Matsumoto (elected by Co-Sponsor Members). Atsushi Endo resigned on 30 June 2020, Lianna Galstyan resigned on 24 November 2020. As is permitted by Article 64 of our Articles of Association (“Articles”) and as was the case with a previous casual vacancy arising in May 2019, the Board decided to leave their seats vacant until the 2021 AGM when Lim Choon Sai, Tham Yiu Kwok and Tommy Matsumoto will retire from office: a total of 5 seats are therefore to be filled next month.

4. On 16 December 2020 the Board adopted a Board Elections Procedure (“BEP”) for 2021 –
 - Nomination Period – 28 December 2020 to 1 February 2021 (36 days)
 - Nominations Report Sent to Board – 3 February 2021
 - Notice of AGM Issued – 5 February 2021
 - Voting Period – 5 February 2021 to 19 February 2021 (14 days)
 - AGM & Announcement of Election Results – 28 February 2021
 - New Board Assumes Office – 28 February 2021
5. The above steps are similar to those of previous elections. In addition, the 2021 BEP requires ballots cast in the Voting Period to be reviewed by DA’s auditors as appointed scrutineers in accordance with HKSRS 4400 issued by the Hong Kong Institute of Certified Public Accountants. This particular step did not feature in the 2020 BEP but was added once it became clear that the 2020 Board election would be particularly contentious.
6. During the 2020 AGM and over the course of the past 12 months a current Board member has claimed that the BEP conflicts with the provisions of Article 40(b) of DA’s Articles of Association. This states -

“Not less than fourteen (14) days but not more than twenty-eight (28) days before the date appointed for the annual general meeting, there shall have been sent to the Board a notice in writing signed by the proposer and endorsed by the seconder of their intention to propose such candidate for election and also a notice in writing signed by that candidate of his willingness to be elected.”

7. A former Board member has recently claimed that terms of DA’s auditors’ appointment as scrutineers should be in the nature of an assurance engagement, also that they may not perform those duties neutrally.

8. These claims have been made in the context of High Court Actions launched against DA, its subsidiary Namesphere Limited (“NS”), the CEO and several members of the Board by the former Board member, appear to have been given circulation within the DA membership and the internet community and are rapidly taking on the character of smearing tactics ahead of the 2021 AGM. The Board has accordingly sought counsel’s advice on how best to inform the DA membership. It would be inappropriate for the Board to comment on aspects of these claims that might bear on the High Court Actions and so only extracts of counsel’s advice appear below.

9. As to the claim that BEP conflicts with Article 40(b), it is counsel’s advice that

The Board’s power to sanction the BEP and related practice falls within the provisions of Article 46 which provides that the Board may make, amend and repeal all such rules as it may deem necessary or convenient for the proper conduct and management of DA, provided that such rules are not inconsistent with the Articles. The BEPs are intended to provide clarifications, interpretations and additional details for the implementation of Board Elections...

The Board has consistently set a nomination period well ahead of the AGM in each year since the 2014 Board elections, perhaps earlier. The short question is whether this practice conflicts with Article 40(b). The short answer is that it does not.

The operative provision in Article 40(b) “...there shall have been sent to the Board a notice in writing signed by the proposer and endorsed by the seconder... and also a notice in writing signed by that candidate...” does not purport to prescribe a nomination period as such, nor does it prescribe when nominations shall be made. Article 40(b) instead specifies who is to make (and accept) nominations and then the period of time in which the Board shall be informed. But Article 40(b) does not specify who is to inform the Board.

Had Article 40(b) specified that the proposer and seconder, also the candidate, are the persons required to send to the Board their written notices within this 14-day

window then there would be no room for the Board to specify a timetable requiring proposers, seconders and candidates to send their notices any earlier. However, any election requires time in which to check the validity of nominations received and then to count ballots eventually received. An interpretation of Article 40(b) requiring the Board to receive nomination notices and acceptances from proposers, seconders and candidates within this 14-day window would not realistically permit much more than 7 days for voting. Given the nature of DA's membership organisations, this would hardly be a realistic state of affairs.

In my opinion the absences in Article 40(b) of any clear and definitive provision of a nomination period and of just who should send these notices to the Board leaves the Board entitled to sanction (as indeed it has) a more detailed procedure building on the bare simplicity of what is in Article 40(b). Paragraph 2.2 of the BEP closes with the following

“The nomination results, along with the nominations, secondings and candidacy acceptances, undersigned and endorsed via emails by the proposers, seconders and candidates respectively, as well as the voting results to be ratified will be submitted to the Board not less than fourteen (14) but not more than twenty-eight (28) days before the day appointed for the AGM.”

I am instructed that nominations for the 2020 Board elections were in fact submitted to the Board on 31 January 2020, being within the 14 to 28-day period preceding the 17 February 2020 AGM and as prescribed by Article 40(b), albeit along with preliminary results of voting. As regards BEP2021 paragraph 2.1, this is entirely consistent with the Board being informed in accordance with the requirements of Article 40(b).

10. As to the claim about the scrutineers' terms of engagement it is counsel's advice that

The very nature of an assurance engagement is to express matters of opinion, whereas in an engagement pursuant to HKSRS 4400 findings are the “factual results of the agreed-upon procedures performed” and it is up to the engaging party to satisfy itself whether the procedures adopted are in themselves sufficient and satisfactory for the fact-finding purpose. There is no need to extend the scrutineers'

task to that of an assurance engagement... If the Board wishes to include an additional procedural element requiring the scrutineer independently to contact each party responsible for returning a ballot in order to confirm as a matter of fact that such party genuinely did so return it then that is a simple matter of amending the agreed-upon procedures to be performed... RSM's finding as fact when carrying out their work as scrutineers that "the ballot of directors' re-election was held according to the memorandum and articles of association" is correct: nominations were sent to the Board on 31 January 2020, being at least 14 days but not more than 28 days prior to the AGM as required by Article 40(b).

11. The claim about the scrutineers' neutrality is made in the context of a former Board member's allegations of large sums having gone missing from NS and his request for copies of accounting transaction documents concerning allocations of DA expenses charged to NS (in which the former Board member has an investment interest) and which he claims DA's auditors had undertaken on behalf of the CEO (who also has an investment interest in NS) to deliver to him. It is counsel's advice that

However, there is no mention of RSM in the email correspondence chain provided... in support of this complaint, let alone any mention of the role they are supposed to have performed on the CEO's behalf. In any event, this complaint no longer has substance in light of the fact that the DA board agreed to the appointment (at the joint expense of DA and NS) of an accountant of [the former Board member's] choice to conduct a review to address those inquiries. The Board then resolved to provide access to previous audited financial statements and further resolved that, on account of personal interests in the matter, provision of documents relating to NS issues should be conditional upon signing a confidentiality agreement, also that upon completion of the independent accounting review the former Board member should receive all draft and final reports of inquiries in relation to those expense allocations.

12. Counsel has also advised that our long-standing practice of inviting Board election results to be ratified by show of hands at the AGM is not only unnecessary but may create conflict with the provision found at Article 40(f)

which provides, *“Each Member of a category is entitled to a number of votes which is equal to the number of vacancies in the Board for such category, the election to the Board shall be made by way of ballot.”*

13. It is counsel’s advice that

... votes cast by ballot are then made conditional upon... potential rejection by a much smaller number of members taking the trouble to attend the AGM in person; members of one category may choose not to ratify votes cast by ballot of the other category. Seeking ratification also questions the purpose of engaging scrutineers to supervise the election process.

14. The Board will accordingly be treating the results of ballots cast according to this year’s BEP and certified by scrutineers as final and will report the same to the AGM instead of then seeking to have them ratified by members.

Board Exco

15. A current Board member and former Board member have recently claimed that DA is run by the CEO with the connivance of an inner circle. This is untrue. It was in fact in response to previous attacks on its integrity and governance that the Board adopted its Corporate Governance Framework (“**CG Framework**”) in April 2020 comprising committees of the Board dealing with community projects, finance and governance. These committees were created by Board decisions of 24 & 25 May 2019 in which the current Board member and former Board member both participated. All Board members were encouraged to join at least one committee. On 19 June 2019 came the Board’s decision (in which the current Board member advancing this complaint participated but from which the former Board member remained absent) to create the Board Exco. It is the Board Exco, not the CEO, which *“shall exercise all powers of the Board in the oversight of the management of the business and affairs”* of DA and although the CEO is

designated as *ex officio* member of its committees the CG Framework does *not* identify the CEO as a Board Officer.

16. It is, frankly, perverse of any current or former Board member to contend that the very measures put in place to guard against the danger of any single Board member usurping the Board's powers and responsibilities are now being misused. I and the other members of the Board Exco (Satish Babu and Lim Choon Sai) resent claims that we are somehow either misled by the CEO, conniving with the CEO or constitute an "inner circle" and any member organization having reason to think that we are misusing the Board's powers and responsibilities is invited to contact any one or all of us directly to discuss their concerns.

17. The same current Board member and former Board member claim that the Board Exco withholds information from remaining members of the Board and that the Board's decision of 29 October 2020 to balance the extent of detail recorded in Board minutes with the commitment to transparency amounts to a severe restriction on Board members' access to books of account. Counsel has advised –

There is no substance to this complaint since all Board proceedings are recorded and, regardless of how much or how little of those proceedings is reflected in Board minutes all Board members remain entitled to access and listen to the original recordings of those meetings.

18. Counsel has advised of the Board's "Company Documents Director Request Process" ("BFC-002") which provides guidance as to how a Board member might inspect and obtain copies of DA's documents -

This is not entirely consistent with that found at common law which provides that a director's right of access to the generality of company papers flows from his office

and need not be justified or explained: the right exists in order that he may go about fulfilling his duties. This common law right is subject to the court's power to restrict its exercise in circumstances where the company can show that it would be abused and concerns circumstances where directors of companies incorporated with share capital are tasked with supervising the management of the business, whereas DA is in the nature of a community organization whose directors are geographically and functionally distant from its operations and drawn from member organisations whose own purposes and business might routinely conflict with that of DA and the requirement that a Board member first identify the rationale for any requested inspection is arguably entirely consistent with guarding against the danger of such conflicts... DA would remove the prospect of dispute over a Board member having to justify and explain if BFC-002 were amended

1.1 ~~Records~~ Supporting documents related to transactions for which a Director is either an approving authority or a signatory ~~for~~ shall be provided, ~~by default~~ if so requested by the Director, as a matter of routine and otherwise ~~or~~ provided upon request.

2.1.2 ~~State the purpose or rationale for such request~~

19. The Board will adopt counsel's advice and amend BFC-002 so that, unless there are good reasons to suspect abuse, supporting documents be provided to Board members on request and without prior justification being sought. As per counsel's advice, Board members will be reminded of their duties prior to disclosing or sharing confidential information and in appropriate circumstances adopt measures to prevent inadvertent leak of abuse of particularly sensitive or confidential information, particularly matters of litigation.

Allocation of DA Costs, Reimbursement of Expenses

20. At the June 2019 Board meeting and against the background of allegations made by a former Board member (and investor in NS) that very large sums of DA expenses had been wrongly charged to NS or its investments the current Board member requested the CEO (also an investor in NS) to provide *all* Board members with soft copies of DA expense reports and

allocation of DA staff costs in respect of NS activity. The Board resolved that such matters should be considered by the Board finance committee in the first instance and engaged an accounting firm of the former Board member's choice to undertake an accounting review for 7 or so years of NS transactions and to propose adjustments (if any) to the NS cash balance as of 7 June 2019.

21. The *draft* form of accountant's report observed that, since US\$36,285 of expenses incurred by a Board member and a former business development officer on NS matters were not supported by satisfactory receipts showing them as chargeable to NS (there was *no suggestion* that these expenses were not actually incurred), the DA Group cash balance of *negative* US\$607,178.91 as of 7 June 2019 should be adjusted accordingly and to *negative* US\$570,893.55.
22. However, subsequent intervention by the former Board member and his legal advisers against the accounting firm of his choice has since prevented delivery of a final report.

Board Meetings, Decisions & Minutes

23. A current Board member has in recent months claimed that DA Board meetings have not been convened with sufficient notice, also that Board papers have not been circulated with sufficient notice, citing the 21-day notice and 14- day agenda requirements found at Article 54. Failure to meet these notice and agenda requirements is cited as justification for declining participation in Board meetings and as grounds that Board meetings have not been validly held in recent months - and, in consequence, decisions taken (including the election of the current Board chair) are invalid).
24. This is a matter of fundamental concern and on which the Board has sought counsel's advice –

Articles dealing with proceedings of the board of directors begin with Article 51 which provides “*The Board may meet and regulate its business as it thinks fit.*” This is a general enabling provision to be read without restriction and to suit the Board’s circumstances from time to time. Those 21 and 14 day requirements at Article 54 concern the particular purpose and circumstances of Article 54, being those exceptional instances where a Board member takes it upon himself to convene a particular Board meeting and do not bind the Board in respect of its meetings generally. The misunderstanding of the purpose of Article 54 has even been extrapolated to responses to notices of NS board meetings which was asserted that should also be convened with at least 14 days’ notice, whereas article 65 of NS’s articles states “*The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit.*”

25. Also a matter of fundamental concern is the claim that minutes of DA Board meetings fail to reflect correct or complete records of proceedings and that the CEO has distorted matters as recorded - in minutes of the October 2019 Board meeting in particular. Again, the Board has sought counsel’s advice -

Other than presenting a complete, verbatim account there is no satisfactory formula to be adopted when drafting minutes of any meeting. Minutes are in essence a record of decisions taken, along with any materially relevant facts by way of explanation, and not a record of every nuance or particular view expressed. If persons present at a meeting speak at risk of their full and frank views finding their way into the record (which, in the case of DA is a very public record) then this will inhibit discussion and, in turn, the quality of decision making.

The DA Code of Conduct states, “All business undertaken by the Board is confidential.” This requirement has to be understood along with the fact that DA is in the nature of a community organization practising a high degree of transparency and posts minutes of Board meeting to its website and hence in the public domain. If directors are to feel secure in voicing opinions fearlessly then they must be afforded some degree of protection when it comes to the prospect of those opinions being recorded in Board minutes.

Current arrangements for the writing of Board minutes commence with the Secretariat preparing an initial draft for circulation among Board Exco members and then, adopting any changes made at that stage, the minutes are circulated to the Board as a whole.

26. On the role of the Board Exco, it is counsel's advice -

Reserving to itself the role of approving and presenting minutes to the full Board for final approval risks being perceived as the kind of "inner circle" function of which [the current Board member] has made allegation... Minutes of meetings are more typically drafted for the Chairman by the meeting secretary and according to his style and practice as to how much or how little to record and whether to attribute views to particular members present or resort to use of the third person. Notwithstanding the Board chair's function in working collaboratively with the CEO and, implicit at paras 3.3, 3.4 & 3.5 of the Board Governance Framework, responsibility for presenting draft minutes of meetings of the Board, the Framework ought to state clearly that draft minutes are prepared at the Board chair's instructions for prompt circulation among all Board members and then presented by the Board chair at the next meeting their approval and without first being considered by the Board Exco.

27. The Board intends to address this procedural observation at its next meeting so that draft minutes are circulated among all Board members simultaneously once they have been reviewed by the Chair and, consequently, sooner than is currently the case.

28. Let me close this note with a personal observation. Any current or aspiring Board member who at any time feels they have been given insufficient information, or inadequate time in which to consider information, so as to go about their duties is entitled *and expected* to say so during our Board meetings. Inability to attend in-person is no excuse – even before current health and travel advisories and restrictions it has always been possible to join our Board meetings online. It is a well-established principle of good

governance that boards govern through principles of collective responsibility: once a decision has been reached all Board members are expected to support it. Choosing to sit on the sidelines while throwing stones and citing forensic and highly technical complaint does none of our member organisations any credit.

For and on behalf of the Board

Maureen Hilyard

Board Chair

[] January 2021