

## Articles of Association

### *Second Consultation paper*

As described in our first consultation paper, we are updating our Articles of Association, the document that describes how we interact with our members and how we are governed.

The first consultation dealt with Board composition, policy and fees and ran for 3 months between 2 February 2007 and 9 May 2007:

<http://www.nominet.org.uk/policy/consultations/firstgov>

We received 70 responses and thank those who took the time and effort to respond.

We are now starting this second consultation, which will also last 3 months, from 31 July to 31 October, and will cover the remaining issues of membership, poll voting, proxies and “legal technicalities”. As before, anyone can respond to this consultation. Please either:

- respond to the online survey
- attend outreach events and give your feedback
- email your answers to the questions presented in this document to [governanceconsultation@nominet.org.uk](mailto:governanceconsultation@nominet.org.uk)

All responses will be published on our web site, however we reserve the right to remove any materials that in our opinion are defamatory, offensive or unintelligible.

We look forward to receiving your comments.

## 1 Membership

### 1.1 Terminology and transfer

#### *Current position*

- Currently the articles describe the members of the company as “the Steering Committee” and state that their role is to “consider technical issues relating to naming in the .uk domain and advise the Council of Management on such matters”. The various different types of members are described by reference to business activities (e.g. ISPs, connectivity resellers).
- It is not clear where membership is via a partnership, what happens when the partnership is dissolved.
- It is not explicitly clear that membership is non-transferable.

#### *Nominet’s proposal*

- We propose to state that any person may apply for membership (without any reference to their business activities).
- We propose to simplify the terminology by referring to members simply as “members” rather than “the Steering Committee”.
- Where a membership is via a partnership we propose to clarify that the breaking up of the partnership will result in the cessation of membership.
- We also wish to make it clear that membership is not transferable.

#### *Why change?*

- In keeping with Nominet’s role and mission it is appropriate that anyone who has an interest in Nominet can be a member.
- To simplify the terminology.
- To put partnerships in the equivalent position as a company in the event of liquidation.
- We think it is implied that membership is not transferable. We propose to clarify this because currently a number of members try to avoid the initial up front fee by transferring memberships.

#### **Question 1**

*How do you feel about the above proposed changes to the membership provisions?*

*I agree strongly / I agree / I don’t mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

### 1.2 Membership rules and expulsion for breach

#### *Current position*

- There are no restrictions on the activities of members.
- There have been examples where some members have suggested we should expel a member

- In one example, Nominet won a High Court case against a member, (<http://www.nominet.org.uk/disputes/courtcases/domainregserv/>) but felt unable to expel them
- Currently the articles provide that a member can only be expelled by a resolution of 90 % of the members at a general meeting.

#### *Nominet's proposal*

- We propose to develop membership rules in consultation with our members, which will state certain behaviours which are considered unacceptable, for example criminal activity, threatened or actual physical or verbal abuse of Nominet's staff and bringing Nominet into disrepute.
- We propose that the Board is given the power to expel a member if they are found to breach the membership rules, either for a single serious breach or for repeated less serious breaches. This is obviously a serious sanction, and therefore members would be subject to certain protections, such as a requirement for a unanimous vote of the Board and a right of appeal to an independent arbitrator. We would need to develop a procedure for this in consultation with our members.

#### *Why change?*

- To protect us and our employees from members who are abusive or behave illegally or bring the company into disrepute we need in exceptional circumstances to be able to expel members, for example, a number of the scammers that we successfully sued were members and we were unable to expel them.
- The current requirement for a 90 % members' vote is too restrictive. And requires a general meeting to be held

### **Question 2**

*How do you feel about the introduction of rules of membership?*

*I agree strongly / I agree / I don't mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

### **Question 3**

*How do you feel about the introduction of revised membership expulsion procedures and the proposed Board power to expel members?*

*I agree strongly / I agree / I don't mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

## 2 Voting

### *Current position*

- A poll can be demanded either by (i) the Chairman (ii) at least two members (iii) members representing not less than one tenth of the total voting rights
- We are currently unable to declare a poll in advance of a meeting
- A poll may be demanded only following a vote on a show of hands
- An ordinary resolution requires a two-thirds majority

### *Nominet's proposal*

- We propose to simplify this provision by simply stating that any two members may demand a poll
- We also propose that the Chairman should be entitled to declare a poll in advance of the meeting
- We propose that ordinary resolutions require a simple majority

### *Why Change?*

- To simplify the poll voting procedure
- To bring the threshold for passing an ordinary resolution into line with the statutory position

### **Question 4**

*How do you feel about the proposed changes to the poll voting procedure?*

*I agree strongly / I agree / I don't mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

### **Question 5**

*How do you feel about the proposed changes to the ordinary resolution threshold?*

*I agree strongly / I agree / I don't mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

### 3 Proxies

#### *Current position*

- Where members cannot or do not wish to attend a meeting, they can still vote by appointing another person to attend and vote on their behalf. This is known as a “proxy”
- Proxies papers must arrive at least 48 hours prior to the vote or in the case of a poll, at least 24 hours before the time of the poll
- The articles are silent as to whether a proxy is entitled to speak at a meeting, but many members who appoint a proxy do so for voting purposes only
- The proxy form is set out in the articles

#### *Nominet’s proposal*

- As a general rule to have a single 24 hour cut off for the submission of proxy papers for both votes on a show of hands and polls
- To clarify that proxies should be present to represent an absent member’s votes, but should not speak at a meeting without the permission of the Chairman
- To be more flexible as to the proxy form

#### *Why change?*

- It is confusing to have two time deadlines, especially where the same meeting has a vote on a show of hands and a poll
- It is probably implied that proxies are present purely for voting purposes, but it would help if this were made explicit
- The proxy form could be more user friendly and easier to change

#### **Question 6**

*How do you feel about the proposed changes to proxy arrangements?*

*I agree strongly / I agree / I don’t mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

## 4 Legal Technicalities

### 4.1 Death of a sole member

The articles are silent as to what would happen in the unlikely situation that the death of a sole member leaves the company with no members and no directors. There is a standard clause to cover that situation which allows for the appointment of a replacement director by the personal representatives of the deceased member which we would like to adopt.

#### **Question 7**

*How do you feel about the proposed adoption of a clause to cover the death of a sole member?*

*I agree strongly / I agree / I don't mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

### 4.2 Written resolutions

Article 49 currently sets out the procedure for passing members' resolutions using a "written resolution procedure". Given the current number of members we do not ever envisage using this procedure and we would therefore propose its replacement by a shorter simple reference to the statutory default process.

#### **Question 8**

*How do you feel about the proposed changes to the written resolution procedure?*

*I agree strongly / I agree / I don't mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

### 4.3 Indemnities

Article 52 indemnifies company officers where liability is incurred defending proceedings in which final judgment is given in their favour of the officer. This reflects the maximum indemnity legally permissible at the time of Nominet's formation 11 years ago. The law has subsequently changed and therefore we seek to widen the scope of the indemnity in line with the change in law. The main benefit of this is that a wider indemnity can, at the company's discretion, be granted, and that defence costs can be included where a case is either settled or dropped and otherwise a company officer would be unfairly left out of pocket.

#### **Question 9**

*How do you feel about the proposed changes to the indemnity clause?*

*I agree strongly / I agree / I don't mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

## **5 Any other issues**

### **Question 10**

*Do you think that Nominet should use this opportunity to try and make the articles shorter and more user friendly by removing sections which duplicate the statutory position, or which are no longer relevant?*

*I agree strongly / I agree / I don't mind one way or the other / I disagree / I disagree strongly*

*I would like to make comments*

### **Question 11**

*Do you have any other comments you would like to make?*