

## Regulations Regarding Incompatibilities and Capacities

Approved: June 2024

The spirit of these Regulations is that members of LACNIC's elected bodies and/or candidates to one of LACNIC's elected bodies must serve "in an individual capacity, not as representatives of any member organization to which they may belong" (Art. 24, Chapter V, LACNIC Bylaws), placing LACNIC and the LACNIC community above all other interests. Thus, the Regulations seek to prioritize the independence and capacity of the members and/or candidates to LACNIC's elected bodies. They have been developed by the LACNIC Board based on the powers and responsibilities listed in Article 24 of the LACNIC Bylaws, which states that:

*"Based on the principles established herein, the Board of Directors shall establish objective, detailed criteria for defining the grounds for incompatibility as well as for borderline or doubtful cases. [...] The regulations and any successive modifications thereto may only be implemented if they are approved prior to any electoral act."*

This document is a working version of the regulations under development and may therefore be modified and updated periodically by the Board, specifying in each successive modification the corresponding date of approval. In any case, under the LACNIC Bylaws, these regulations will only come into force if they are approved by the Board of Directors and published prior to the start of the corresponding election.

### Examples to help clarify the regulations.

Several cases are presented as examples with the intention of clarifying these regulations. Some examples lack full details, as they focus only on the elements relevant to the specific section of the regulations in which they appear. These examples are fictional.

#### **I. Criteria or rules for interpreting the incompatibility which states that no more than one or two members of an elected body may be citizens of the same country of the Region.**

- a) **Citizen of a country, but with obvious ties to a country other than that of their citizenship:** A member of, or a candidate to, one of the elected bodies may have obvious ties with a country other than their citizenship. In such cases, applying the theory of reality established in the LACNIC Bylaws, the Electoral Commission may declare that there is an incompatibility due to citizenship based on the country with which they have obvious ties.

Some of the elements the Electoral Commission might consider for the purpose of determining the existence of obvious ties (though not all of them need to be present) are as follows:

- I. Having lived in that country for an extended period of time (not less than 5 years).
- II. Having been in a relationship as an employee, consultant, advisor, director and/or shareholder of organizations and/or companies in that country for

- an extended period of time (not less than 5 years).
- III. Having family members who have lived in that country for an extended period of time (not less than 5 years).
  - IV. Having participated in organizations related to the Internet community in that country.
  - V. Having met the requirements to obtain citizenship in that country.
  - VI. Lack of obvious ties with the country of citizenship, i.e., a substantial number of items i) - v) of this document are not met in relation to the country of citizenship.

**Example 1a. Citizen of one country with obvious ties to another.**

A **candidate** to the LACNIC Board of Directors is a citizen of country A but has been working in her own company and living in country B for seven years. Her close family also resides in country B, where the candidate participates in industry organizations. If two\* individuals from country B were currently serving on the LACNIC Board, even though she is a citizen of country A, this candidate has more obvious ties with country B and therefore an incompatibility exists.

\*One in the case of the Commissions

**Example 1b. Citizen of a country with obvious ties to that country.**

A **candidate** to the LACNIC Board of Directors is a citizen of country A, has been working in his own company and living in country B for two years. His close family also resides in country B, from which the candidate participates in industry organizations in country A (his country of origin), such as the local Internet Society chapter and local IGF efforts. If two\* individuals from country B were currently serving on the LACNIC Board, even though he resides in country B, this **candidate** has obvious ties with country A and therefore no incompatibility exists.

\*One in the case of the Commissions

**Example 1c. Citizen and resident of a country.**

Two **candidates** running for a position on the LACNIC Board of Directors are citizens of country A, have participated in different national or foreign corporations, and lived abroad for periods shorter than three years. However, both are currently living in country A and have no significant ties with the community in any other country. If a citizen of country A is already serving on the Board and will continue to serve in the following period, this would limit the election to only one of the two **candidates** described, provided that one of the two receives enough votes. In the situation above, if both citizens of country A were to receive the two highest numbers of votes, only the first candidate would be eligible to serve on the Board. However, there would be no way to determine this until the voting period has ended.

- b) **Birthright citizenship or citizenship by birth:** In many countries of the region, citizenship is determined by the place of birth and/or the citizenship of one or both parents, without the individual having any other ties to the country.

Additionally, national laws or constitutions may declare birthright citizenship or citizenship by birth inalienable, meaning that the individual cannot renounce them.

In such cases, provided that the person with birthright citizenship or citizenship by birth has no other significant ties to the country (based on the criteria in item a) above), this citizenship will not be considered when determining potential incompatibilities for election to LACNIC's elected bodies.

**Example 2a. Birthright citizenship or citizenship by birth.**

A **candidate** to the LACNIC Board has spent her entire professional life working for different companies in country A, where her close family lives and she participates in local industry associations. In addition, she maintains birthright citizenship in country B. If two citizens of country B are already serving on the Board, regardless of the fact that the **candidate** also has nationality in country B and the limit of two directors from country B has already been reached, the **candidate** clearly has stronger ties with country A and no additional ties to country B and its local Internet community, so in this case there is no incompatibility.

**Example 2b. Birthright citizenship.**

A current **member of the LACNIC Board** is a citizen of country A and has recently completed the process to have his birthright citizenship of country B recognized. Even if there are already two directors from country B serving on the Board, regardless of their ties to the community of either country, the Bylaws state that there is no need to resign from an elected body upon acquiring a new citizenship. Once his current term ends, if he wishes to run for re-election, it will have to be established if he maintains any other ties to country B in addition to the new citizenship. This will determine whether an incompatibility exists that would prevent him from being elected again (assuming that there are already two directors from country B serving on the Board).

**II. Criteria or rules for interpreting the incompatibility which states that no more than one member of, or candidate to, an elected body may be an employee, consultant or advisor of the same Company or Organization and/or of one of its Related Companies, whether established in the same country or not.**

Article 20 of the LACNIC Bylaws specifies the incompatibility due to relationships with the same company and includes the following example:

*“Not more than one Director may have employment, consultancy or advisory relationships with the same Company or Organization and/or with one of its Related Companies, whether established in the same country or not.*

*In order to determine whether or not this incompatibility exists, the following criteria shall be considered: whether the relationship is in a paid or honorary capacity; the influence that the Company or Organization may exert in relation to the candidate's election and the background that makes the candidate eligible; the position held by the candidate within the Company or Organization; and the degree of influence that the Company or Organization may have over the individual once he/she occupies the position, or that the individual may have over the Director of said Company or Organization, or vice versa, for reasons of hierarchy or control.”*

These regulations clarify the scope of the text contained in the Bylaws to make it

easier for the Electoral Commission to decide on potential incompatibilities.

a) **Same Company:** Any company that is part of the same business group, whether the Company itself or part of a group of companies, directly or indirectly controlled by the same individual or business group.

“Controlled” means a company: (i) where fifty percent (50%) or more is directly or indirectly owned by the same individual, family, or controlling business group; (ii) whose accounts are consolidated with those of the individual, family, or controlling business group in their financial statements, if they prepare consolidated financial statements; and/or (iii) having direct or indirect control.

With respect to a company, “indirect control” means a company: (i) where the individual, family, or controlling business group can exercise more than fifty percent of the voting rights at the shareholders’ assembly as a consequence of being direct or indirect shareholders, or through the conclusion of usufruct, pledge, trust, and/or similar agreements, or agreements with other shareholders; and/or (ii) whose board members may be appointed or removed by the individual, family, or controlling business group without the need to have more than fifty percent of the voting rights at the shareholders’ assembly.

Therefore, this incompatibility applies if a candidate or member of one of LACNIC’s elected bodies is part of the same Company, the same group of companies, or a company directly or indirectly controlled by the same individual or controlling business group as another. In this sense, the Bylaws expressly extend the incompatibility to related companies whether located in the same country or not.

**Example 3a. Same company.**

One of LACNIC’s directors works for ABC Inc. and a **candidate** to the LACNIC Board works for XYZ Inc. Both companies are controlled by the business group Telecom JKI Ltd. In this case, an incompatibility exists for the **candidate** to the Board.

**Example 3b. Same company.**

A **candidate** to the LACNIC Board is the Operations Manager at ABC Inc.; another **candidate** works in the Operations Control Department under the Operations Manager at the same company, ABC Inc. In this case, it is not possible to determine the existence of an incompatibility prior to the elections, as the incompatibility would only exist if both candidates were elected.

b) **Relationships in a paid or honorary capacity:** The Bylaws distinguish between relationships in a paid or honorary capacity, assigning a higher degree of incompatibility when a member and/or candidate to an elected body has a paid relationship than when the relationship is honorary.

**Relationships in a paid capacity:** Relationships where one party pays a salary and/or significant financial benefit to another, either through an employment relationship or through a contract for the provision of paid advisory or counseling services, participation in the Board or other management positions, and/or holding shares in said Company.

**Relationships in an honorary capacity:** Relationships where the person does not receive a salary or any other financial benefits. *Per diem* and/or the reimbursement of reasonable expenses are not considered financial benefits. Reasonable expenses should be interpreted as *per diem* and/or reimbursement of appropriate expenses (i.e., not a hidden salary).

**Example 4a. Relationships in a paid capacity:**

One of LACNIC's directors works for ABC Inc. and a **candidate** to the LACNIC Board is an Advisor with a fixed-term contract at XYZ Inc. Both companies are controlled by Telecom JKI Ltd. In this case, an incompatibility exists.

**Example 4b. Relationships in a paid capacity with false/incomplete information:**

One of LACNIC's directors works for ABC Inc. but fails to disclose this information in the required candidate questionnaire. A **candidate** to the LACNIC Board has a fixed-term contract to serve as an Advisor to XYZ Inc. Both companies are controlled by Telecom JKI Ltd. In this case, it would not be possible to determine any incompatibility, as the Electoral Commission would lack the elements to do so. However, if a complaint is filed regarding the non-disclosure of this information and the Electoral Commission confirms the existence of an incompatibility, the candidate would be in breach of the sworn statement affirming that the information provided would be true, accurate, and complete.

**Example 5. Relationships in an honorary capacity.**

One of LACNIC's directors works for ABC Inc. Meanwhile, a **candidate** to the LACNIC Board serves on the Advisory Council of XYZ Inc. in an honorary capacity, receiving no income or benefits beyond the reimbursement of the expenses she reasonably incurs in this activity. Both companies are controlled by Telecom JKI Ltd. In this case, **no incompatibility exists.**

c) **Position of hierarchy:** A situation where a member of an elected body and/or a candidate to an elected body holds a role that allows them to direct another's decisions on the elected body due to the subordinate nature of their role.

These incompatibilities are analyzed based on the theory of reality, considering factors such as the existence of a paid relationship, income weight and relevance, and the decision-making power of the member and/or candidate that is in a position of hierarchy over the other. The pressure an Executive Director or CEO can exert over an employee differs significantly from the pressure a member of a collegiate board can exert over a senior manager.

**Example 6a. Relationships in an honorary capacity, position of hierarchy.**

One of LACNIC's directors is employed by ABC Inc. Meanwhile, a **candidate** to the LACNIC Board serves on the Board of Directors of Telecom JKI Ltd., ABC Inc.'s controlling company, where he participates in an honorary capacity and receives no income or benefits beyond the reimbursement of the expenses he reasonably incurs in this activity. In this case **an incompatibility exists for the candidate**, not because the **relationship** is in a paid capacity (which it is not), but because the candidate holds a position of hierarchy over the director and may therefore influence his decisions.

**Example 6b. Relationships in an honorary capacity, no position of hierarchy.**

One of LACNIC's directors is employed by ABC Inc. Meanwhile, a **candidate** to the LACNIC Board is serving on the 20-member Advisory Council of organization XYZ A.C, where he participates in an honorary capacity and receives no income or benefits beyond the reimbursement of the expenses he reasonably incurs in this activity. In this case **no incompatibility exists**. First, because the relationship is honorary; second, because the candidate is not in a position of hierarchy over the director, as he is part of an advisory body rather than the Board of Directors.

**Example 6c. Relationships in an honorary capacity, no position of hierarchy.**

One of LACNIC's directors is serving on the Board of a regional Internet organization, where he participates in an honorary capacity or receives a modest compensation that represents a minor portion of his earnings. Meanwhile, a **candidate** to the LACNIC Board is also serving on the Board of the same regional Internet organization, where he also participates in an honorary capacity or receives a modest compensation, which also represents a minor part of his earnings. In this case, no incompatibility exists because the relationship is an honorary capacity or for a minor compensation, and also because neither the candidate nor the Director holds a position of hierarchy over the other, so one will not influence the decisions of the other.

The criteria detailed above are meant to help guide the Electoral Commission in determining the degree of incompatibility among members and candidates to an elected body based on their involvement with the same company (item a), financial influence (item b), and hierarchy (item c).

**III. Mandatory competences criteria:** In addition to the incompatibility criteria based on which a candidate may be excluded from serving on LACNIC's elected bodies, the LACNIC Board recognizes a series of qualifications which represent the minimum capabilities expected of a member of LACNIC's elected bodies and which, because of their objective nature, may lead the Fiscal Commission to exclude a candidate from participating in the corresponding election if they are not met. These criteria may be included in candidate nomination forms.

**a. Legal**

- i. **Legal age:** Members of, or candidates to, LACNIC's elected bodies must be of legal age in the country of which they are citizens, but never younger than 18. This ensures that they are able to assume legal responsibilities (such as signing confidentiality agreements, minutes, or resolutions).
- ii. **Free citizens:** Members of, or candidates to, LACNIC's elected bodies must not be deprived of their freedom and, generally speaking, their civil rights must not be limited in any way. Regarding the latter requirement, having to request authorization from the Government or the Courts is acceptable, provided such authorization is not denied for more than two (2) trips in a row, or three (3) trips within the same year.
- iii. **Legal capacity to trade:** Members of, or candidates to, LACNIC's elected bodies must not be in the process of being, or have been, declared bankrupt, insolvent, and/or similar, and any such incapacity to trade must have been resolved/overcome at least five years prior to submitting the candidacy.
- iv. **Ability to communicate in Spanish:** Spanish is the official language of

Uruguay, the country where LACNIC is established and whose regulations it must comply with. Similarly, official internal documentation, working Board documents, and unofficial information are also written in Spanish, as this is the language in which most of LACNIC's advisors and officers work and communicate. This skill may be assessed with the Regulations on Candidate Competencies and Suitability Requirements.

#### **Example 7. Legal Criteria.**

An **applicant** to the LACNIC Board has been named Entrepreneur of the Year in a country of the region but is not of legal age to assume legal responsibilities with LACNIC. In this case, the **applicant** does not meet the necessary technical capacities to be a **candidate**.

#### **b. Health**

- i. **Physical health:** Members of LACNIC's elected bodies must have the health necessary to fulfill their role and travel as many times as necessary, even if such travel involves flights lasting more than ten hours.
- ii. **Mental health:** They must be in possession of their full mental capacity and not under any form of interdiction, guardianship, or curatorship.

#### **Example 8. Health criteria.**

A member of the LACNIC Board has undergone an interdiction process and it has been determined that he is mentally incapable of effectively fulfilling the responsibilities required by the LACNIC Board. In this case, they would no longer meet the capability criteria required for the role.

### **IV. General.**

To preserve the spirit of these regulations, the Electoral Commission may issue an opinion at any stage of the election process, i.e., before, during, or after the voting stage.

Whenever possible, to anticipate and avoid issues that would go against the spirit of prioritizing the independence and capacity of members of elected bodies and/or candidates participating in LACNIC's election processes, the Electoral Commission should make and announce their decisions on cases of incompatibility and incapacity prior to the voting phase. However, the Commission may also do so later if, because of its very nature, the incompatibility or incapacity may only be determined once the voting has concluded or even after the electoral process has been completed.

The calendar for each election must include a period for receiving claims for their discussion by the Electoral Commission both before and after voting takes place.

The candidate questionnaire must require truthful, complete, and current information (personal data, citizenship, relationships, and capabilities relevant to these regulations), as well as the candidate's authorization to publish this information to facilitate the work of the Electoral Commission. The questionnaire must also include a sworn statement by the candidate stating that the provided information is truthful, complete, and current.

While these regulations advance in formalizing the criteria for determining incompatibilities, it is likely that various more complex issues may fall outside the scope of the Electoral Commission's responsibilities. In any case, if the Commission becomes aware of falsehoods or omissions in the information provided by a candidate which it believes give the candidate or member of the elected body undue advantage, it may restrict their candidacy or appointment, as provided for under the Bylaws (Chapter V, art. 24.):

*This commission shall be responsible for overseeing and certifying the electoral processes of the bodies established under these Bylaws, including contesting or restricting to one the positions and candidacies at stake due to incompatibilities (having the authority to eliminate and/or restrict the candidacy of one or more contested candidates and/or candidates investigated at the Electoral Commission's own initiative).*

The decisions of the Electoral Commission are final and may not be appealed. These decisions will be based on the information that can be gathered within the timeframe specified in the election calendar and to the best of the Commission's knowledge and ability. Consequently, in some cases the Commission may decide not to issue a decision for lack of sufficient details.

#### **Instances when the Electoral Commission may issue a decision.**

The Electoral Commission may determine the existence of an incompatibility **before** voting takes place in the following cases:

- Incompatibility in Example 1a.
- Lack of incompatibility in Example 1b.
- Lack of incompatibility in Example 2a.
- Lack of incompatibility under 2b.
- Incompatibility in Example 3a.
- Incompatibility in Example 4a.
- Incompatibility in Example 4b, provided that the information is received in due time.
- Lack of incompatibility in Example 5.
- Incompatibility in Example 6a.
- Lack of incompatibility in Examples 6b and 6c.
- Incapacity in Example 7.

The Electoral Commission may determine the existence of an incompatibility **after** voting takes place in the following cases, provided that the conditions are met:

- Incompatibility in Example 1c.
- Incompatibility in Example 3b.
- Incompatibility in Example 4b, provided that the information is received in due time.

In the following cases, after receiving a claim or at its own initiative **when learning about the situation**, the Electoral Commission may determine the



incompatibility or incapacity of a candidate or member of the elected body, or any falsehood, omission, or lack of information provided by a candidate or member of the elected body, and take appropriate actions to address them:

- Falsehood/omission/lack of information in Example 4b.
- Incapacity in Example 8.