

**ICANN BOARD PAPER NO. 2020-07-09-C2a**

**TITLE: OMBUDSMAN FY20 AT-RISK COMPENSATION**

**PROPOSED ACTION: For Board Consideration and Approval**

Confidential Employment Matter

Whereas, the Compensation Committee recommended that the Board approve payment to the Ombudsman of his FY20 at-risk compensation.

Resolved (2020.xx.xx.xx), the Board hereby approves a payment to the Ombudsman of his FY20 at-risk compensation component.

Resolved (2020.xx.xx.Cxx), this action by the Board shall remain confidential as an “action relating to personnel or employment matters”, pursuant to Article 3, section 3.5b of the ICANN Bylaws.

**PROPOSED RATIONALE:**

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

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

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

While there is a fiscal impact from the results of the scoring, that impact was already accounted for in the FY20 budget. This action will have no impact on the security, stability or resiliency of the domain name system.

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

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**ICANN BOARD SUBMISSION NO. 2020.07.09.C2b**

**TITLE:**

**Extension of Ombudsman Contract**

**PROPOSED ACTION:**

**For Board Consideration and Approval**

Confidential Employment Matter

**PROPOSED RESOLUTION:**

Whereas, the current Ombuds' contract concluded on 30 June 2020.

Whereas, the Cross-Community-Working Group - Accountability Work Stream 2 (CCWG-Accountability WS2) recommendations about the Ombudsman that the Board adopted include the creation of an Advisory Panel, which among other things, is to “[c]ontribute to the selection process for new Ombuds, which would meet the various requirements of the Board and community including diversity.”

Whereas, in order to ensure that the Office of the Ombuds remains operational until a new selection process can be concluded, the Compensation Committee has recommended that: (i) the Board approve an extension of Herb Waye's most recent contract to serve as the ICANN Ombuds, covering the time from 1 July 2020 through 30 June 2025, but ensure that it can be terminated without cause if a new ICANN Ombuds is selected; and (ii) the Board direct the President and CEO, or his designee(s) to take all steps necessary to effectuate the Ombuds' contract extension.

Resolved (2020.07.09.xx), the Board approves the extension of Herb Waye's most recent contract to cover the time period from 1 July 2020 through 30 June 2025, or until the Board appoints ICANN's next Ombuds, whichever is sooner.

Resolved (2020.07.09.xx), the Board directs the President and CEO, or his designee(s), to take all steps necessary to effectuate the Ombuds' contract extension as indicated in the prior resolution.

**PROPOSED RATIONALE:**

ICANN's Bylaws require ICANN to maintain an Office of the Ombuds. (*See* Article 5 of the Bylaws at <https://www.icann.org/resources/pages/governance/bylaws-en/#article5>.) Having an ICANN Ombuds positively affects the transparency and accountability of ICANN as the Ombudsman is one of the three main accountability mechanisms within ICANN. Accordingly, maintaining an appropriate Office of the Ombuds squarely supports ICANN's mission, and is within the public interest.

Several of the Cross-Community-Working Group - Accountability Work Stream 2 (CCWG-Accountability WS2) recommendations adopted by the Board in November 2019 involved the Ombuds Office, including the creation of an Advisory Panel, which among other things, is to “Contribute to the selection process for new Ombuds, which would meet the various requirements of the Board and community including diversity.”

In accordance with the [WS2 Implementation Assessment Report](#), at Section 5.1, page 22, the Ombudsman related recommendations are “cascading” in nature.

For example, the first recommendation is that the Ombuds’ office should “have a more strategic focus”, with enhanced procedures and documentation to accompany that focus. Only once that focus is agreed should ICANN develop a plan to “relaunch” the office. The recommendations about training, contracting, and reporting similarly seem to be premised on the relaunched nature of the office (while taking interim steps towards meeting the spirit of the recommendations along the way).

Accordingly, there are still some other implementation efforts that must be completed before an Advisory Panel is established and the anticipated search for a new Ombuds is concluded. In the meantime, the Board must ensure that there is an Ombuds in place until such time as a new Ombuds search can be completed and appointed by the Board.

The current Ombuds, Herb Waye, has been in place for approximately four years, and he served as Adjunct Ombuds for 10 years prior to that. He is extremely familiar with and well versed in the complex issues facing ICANN and has become quite well known throughout the ICANN community. By all accounts, Mr. Waye has been serving ICANN well as the Ombuds since his tenure began in July 2016.

The Board also notes that Mr. Waye has successfully integrated a new Adjunct Ombuds, which has addressed some of the CCWG-Accountability WS2 recommendations about diversity. This is, in part, was in specific response to make sure the Office can address complaints that may be submitted pursuant to the Community Anti-Harassment Policy.

As there has been a budget for an ICANN Ombuds since 2004 when the first Ombuds was appointed, this decision does not have a financial impact on ICANN, the community, or the

public that is not already anticipated or included in the budget. This decision will not have any impact on the security, stability or resiliency of the domain name system.

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

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