

**KEY CHARACTERISTICS OF THE
EMPOWERED DESIGNATORS MODEL:
With Comparison with Community Mechanism as Sole
Member Model, Community Mechanism as Sole
Designator Model & ICANN Board Proposal**

October 15, 2015

Critique of the Newly Proposed ICANN Governance Models

From the point of view of the Empowered Designator Model

Summary:

- The Empowered Designator Model embodies a belief that ICANN's governance can be enhanced and the community best represented through corporate-law mechanisms readily available under the California statute.
- The Empowered Designator Model requires only very small amendments to ICANN's governing documents because, as is now generally accepted, ICANN is already operating under a designator model.
- The newly proposed models all rely on building wholly new structures—an unincorporated association of the SO/ACs for Community Mechanism proposals, or the MEM process for the Board proposal—each of which is untried and would add a layer of complexity to ICANN's governance.
- The virtues of the Empowered Designator Model are its simplicity, its continuity with ICANN's current structures, and its reliance on ordinary corporate-law, private-arbitration, or judicial processes for enforcement. Consequently, we have not critiqued the enhanced IRP or the MEM in detail, believing that the larger point is more telling, namely, that each of those more complex solutions is likely not the best solution.
- With regard to the question of the legal personality and standing, our approach has been to assume that each SO/AC/NomCom can either be considered an unincorporated association or, if it cannot meet the legal definition of a UA or does not want to be treated as a legal person for any purposes, then ICANN's governing documents could recognize one or more natural persons chosen by the body as its legal representatives.
- Given the difficulties of each model arising from the attempt to operate within the confines of the California Nonprofit Public Benefit Corporation Law, we recommend that consideration also be given to reincorporating ICANN under the law of a jurisdiction that would provide more flexibility in structuring a governance system that was less complicated but more responsive to ICANN's community than the status quo. Specifically, we recommend investigating reincorporation in Delaware, the District of Columbia, or Virginia, each of which possesses a different but very flexible nonprofit corporation law. This could also allow the Board to adopt bylaws which directly correspond with providing the community designators with all of the community powers.
- **Note:** Slides 9 through 12 include material prepared by Sidley & Austin and Adler Colvin. Caplin & Drysdale added what appears on those slides as the fifth column. All other slides were prepared by Caplin & Drysdale following the format used by Sidley/Adler in their "Key Characteristics Comparison" slides (Sept. 28, 2015).

Mechanism/Exercise/Enforcement of Community Powers

Power	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	Enhanced Designator Model
<p>Reconsider/Reject ICANN Budget or Strategy/Operating Plans</p>	<ul style="list-style-type: none"> • Strengths: Sole Member can be given right to reject budget or strategy/operating plan. Cal. Corp. Code § 5210. • Weaknesses: Community rights are exercised only indirectly through Sole Member. Adds a layer of complexity because Sole Member concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/Acs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Sole Designator would have statutory right to remove any or all directors as an indirect enforcement mechanism. Cal. Corp. Code § 5222(f)(1). • Weaknesses: Community rights are exercised only indirectly through Sole Designator. Sole Designator’s direct rights are only consultative—unless enhanced designator position adopted. Adds a layer of complexity because Sole Designator concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/ACs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Maintains current SO/AC structure. If current designator structure is maintained, designators would have statutory right to remove directors as an indirect enforcement mechanism. Cal. Corp. Code § 5222(f)(1). • Weaknesses: Requires institution of internal arbitration system (MEM). MEM subject to internal (board) and external (will court find arbiter’s decision binding on board?) challenge. 	<ul style="list-style-type: none"> • While we believe designators could be given the right to reject reject annual budget and strategy/operating plan (per Cal. Corp. Code §§ 5210, 5056(b)), this approach is not supported by Sidley/Adler. Thus, indirect enforcement of these community powers would be provided, and the Board would face removal if it failed to obtain community review and concurrence of the budget or plans. • Strengths: Simplest model to implement, relies upon direct right of director removal held by SO/ACs, relies on and builds from existing SO/AC structure, no statutory requirement that designators be legal persons. • Weaknesses: Indirect enforcement mechanism might not result in Board compliance unless/until demonstrated. <p style="text-align: center;">3</p>

Mechanism/Exercise/Enforcement of Community Powers

Power	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	Enhanced Designator Model
Reconsider/Reject Changes to ICANN “Standard Bylaws”	<ul style="list-style-type: none"> • Strengths: Sole Member can be given right to reject Bylaws. Cal. Corp. Code § 5150(b). • Weaknesses: Community rights are exercised only indirectly through Sole Member. Adds a layer of complexity because Sole Member concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/Acs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Sole Designator can be given right to reject Bylaws. Cal. Corp. Code § 5150(d). • Weaknesses: Community rights are exercised only indirectly through Sole Designator. Adds a layer of complexity because Sole Designator concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/ACs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Maintains current SO/AC structure. Unclear whether SO/ACs get statutory empowerment of specified persons under Cal. Corp. Code § 5150(d). If current designator structure is maintained, designators would have statutory right to remove directors as an indirect enforcement mechanism. Cal. Corp. Code § 5222(f)(1). • Weaknesses: Requires institution of internal arbitration system (MEM). MEM subject to internal (board) and external (will court find arbiter’s decision binding on board?) challenge. 	<ul style="list-style-type: none"> • In specific Article and Bylaws provisions, Designators representing ¼ of voting power given right to approve all Article and Bylaw amendments. Cal. Corp. Code §§ 5132(c)(4), 5150(d). • Strengths: Simplest model to implement, grants direct rights to SO/ACs, relies on and builds from existing SO/AC structure, case law suggests that rights should be enforceable (assuming legal personality). Includes an amendment to the Articles to ensure Designator rights in Bylaws cannot be changed by the board by amendment of Articles (as authorized by Cal. Corp. Code § 5132(c)(5)). • Weaknesses: Doesn’t distinguish between standard and fundamental bylaws—perhaps also a strength.

Mechanism/Exercise/Enforcement of Community Powers

Power	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	Enhanced Designator Model
Reconsider/Reject Changes to ICANN “Fundamental Bylaws”	<ul style="list-style-type: none"> • Strengths: Sole Member can be given right to reject Bylaws. Cal. Corp. Code § 5150(b). • Weaknesses: Community rights are exercised only indirectly through Sole Member. Adds a layer of complexity because Sole Member concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/Acs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Sole Designator can be given right to reject Bylaws. Cal. Corp. Code § 5150(d). • Weaknesses: Community rights are exercised only indirectly through Sole Designator. Adds a layer of complexity because Sole Designator concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/ACs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Maintains current SO/AC structure. Unclear whether SO/ACs get statutory empowerment of specified persons under Cal. Corp. Code § 5150(d). If current designator structure is maintained, designators would have statutory right to remove directors as an indirect enforcement mechanism. Cal. Corp. Code § 5222(f)(1). • Weaknesses: Requires institution of internal arbitration system (MEM). MEM subject to internal (board) and external (will court find arbiter’s decision binding on board?) challenge. 	<ul style="list-style-type: none"> • In specific Article and Bylaws provisions, Designators representing ¼ of voting power given right to approve all Article and Bylaw amendments. Cal. Corp. Code §§ 5132(c)(4), 5150(d). • Strengths: Simplest model to implement, grants direct rights to SO/ACs, relies on and builds from existing SO/AC structure, case law suggests that rights should be enforceable (assuming legal personality). Includes an amendment to the Articles to ensure Designator rights in Bylaws cannot be changed by the board by amendment of Articles (as authorized by Cal. Corp. Code § 5132(c)(5)). • Weaknesses: Doesn’t distinguish between standard and fundamental bylaws—perhaps also a strength.

Mechanism/Exercise/Enforcement of Community Powers

Power	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	Enhanced Designator Model
Appoint and Remove Individual ICANN Directors	<ul style="list-style-type: none"> • Strengths: Sole Member can be given right to appoint and remove individual directors. Cal. Corp. Code §§ 5056(a), 5222(a)(1). • Weaknesses: SO/AC rights are exercised only indirectly through Sole Member. Adds a layer of complexity because Sole Member concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/ACs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Sole Designator can be given right to appoint and remove individual directors. Cal. Corp. Code §§ 5520(d), 5222(f)(1). • Weaknesses: SO/AC rights are exercised only indirectly through Sole Designator. Adds a layer of complexity because Sole Designator concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/ACs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Presumably maintains current SO/AC structure and appointment rights. • Weaknesses: Individual Designators give up statutory right of removal. Removal depends upon enforceability of petition process and pre-service letters of resignation. 	<ul style="list-style-type: none"> • In specific Bylaws provisions, Designators given right to appoint and remove certain directors. Cal. Corp. Code §§ 5520(d), 5222(f)(1). • Strengths: Reiterates and clarifies the status quo, confirms direct rights of SO/ACs to appoint and remove directors, no statutory requirement that designators be legal persons, case law suggests that rights should be enforceable (assuming legal personality). • Weaknesses: No mechanism to remove entire board absent unanimity among designators—see below.

Mechanism/Exercise/Enforcement of Community Powers

Power	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	Enhanced Designator Model
Recall Entire ICANN Board of Directors	<ul style="list-style-type: none"> • Strengths: Sole Member can be given right to remove entire board. Cal. Corp. Code §§ 5056(a), 5222(a)(1). Addresses desire to have a higher threshold for board recall than the statutory ceiling of a majority of all members. Cal. Corp. Code § 5151(e) (citing § 5222(a) (1)). • Weaknesses: SO/AC rights are exercised only indirectly through Sole Member. Adds a layer of complexity because Sole Member concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/Acs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Sole Designator can be given right to remove entire board. Cal. Corp. Code §§ 5520(d), 5222(f) (1). • Weaknesses: SO/AC rights are exercised only indirectly through Sole Designator. Adds a layer of complexity because Sole Designator concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/ACs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Presumably maintains current SO/AC structure and appointment rights. • Weaknesses: Individual Designators give up statutory right of removal. Removal depends upon enforceability of petition process and pre-service letters of resignation. 	<ul style="list-style-type: none"> • No mechanism to recall entire board is contemplated. Removal of all or most of the directors is left to SO/ACs on the theory that a complaint that would have been sufficient to warrant the recall of the entire board will result in individual removals sufficient to address the complaint. • Strengths: Relies on judgment of individual SO/ACs. • Weaknesses: No true mechanism to remove entire board absent unanimity among designators.

Mechanism/Exercise/Enforcement of Community Powers

Power	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	Enhanced Designator Model
<p>Reconsider/ Reject Board Decisions Relating to Reviews of the IANA Functions, Including Ability to Trigger a Separation of PTI</p>	<ul style="list-style-type: none"> • Strengths: Sole Member can be given right to reject IANA function decisions. Cal. Corp. Code § 5210. • Weaknesses: Community rights are exercised only indirectly through Sole Member. Adds a layer of complexity because Sole Member concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/ACs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Sole Designator would have statutory right to remove any or all directors as an indirect enforcement mechanism. Cal. Corp. Code § 5222(f)(1). • Weaknesses: Community rights are exercised only indirectly through Sole Designator. Sole Designator’s direct rights are only consultative— unless enhanced designator position adopted. Adds a layer of complexity because Sole Designator concept requires formation of new legal person, i.e., an unincorporated association (UA). Under California law, a UA is a group of two or more “persons,” which includes only legal persons. Cal. Corp. Code §§ 18035(a), 18030. So question of legal personality of SO/ACs is not resolved but merely pushed upstream. All UA’s governance must be set out in detail as there is no default statutory law. Creation of a new UA raises questions of organizational independence, tax status, governmental filing obligations, etc. 	<ul style="list-style-type: none"> • Strengths: Maintains current SO/ AC structure. If current designator structure is maintained, designators would have statutory right to remove directors as an indirect enforcement mechanism. Cal. Corp. Code § 5222(f)(1). • Weaknesses: Requires institution of internal arbitration system (MEM). MEM subject to internal (board) and external (will court find arbitrator’s decision binding on board?) challenge. 	<ul style="list-style-type: none"> • While we believe designators could be given the right to reject reject annual budget and strategy/ operating plan (per Cal. Corp. Code §§ 5210, 5056(b)), this approach is not supported by Sidley/Adler. Thus, indirect enforcement of these community powers would be provided, and the Board would face removal if it failed to obtain community review and concurrence of these decisions. • Strengths: Simplest model to implement, relies upon direct right of director removal held by SO/ACs, relies on and builds from existing SO/AC structure, no statutory requirement that designators be legal persons. • Weaknesses: Indirect enforcement mechanism might not result in Board compliance unless/until demonstrated.

Key Characteristics Summary Comparison: CMSM, CMSD, Board Proposal, & *Empowered Designators*

Key Characteristic	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	<i>Enhanced Designator Model</i>
Statutory powers	Broad statutory rights for Sole Member, but limited by institution of high voting thresholds for their exercise.	Since Sole Designator has the right under Bylaws to designate directors, Sole Designator also has the statutory right to remove these directors at any time. Also, designated directors cannot be removed without cause unless Sole Designator consents. Statute permits Articles and Bylaws to give Sole Designator the right to veto amendments. No other rights are given to designators by statute.	None. SO/AC rights limited to those stated in governing documents.	<i>Designators have powers of appointment under the Bylaws. Designators have statutory rights of removal. Designators have approval power as specified persons in Articles and Bylaws over governing documents</i> <i>Designators have indirect approval powers over budget, plan, and IANA function under the Bylaws.</i>
Legal Personhood	Sole Member is an unincorporated association and legal person per ICANN bylaw provisions, SO/AC participants in Sole Member do not need to be legal persons.	Sole Designator is an unincorporated association and legal person per ICANN bylaw provisions, SO/AC participants in Sole Designator do not need to be legal persons.	SO/ACs that seek direct, legal enforceability of their rights would need to be legal persons; MEM Issue Group for enforcement could be organized as legal person (depending on implementation).	<i>Designators should be legal persons as unincorporated associations or act through natural-person representatives, to the extent that they seek legal recourse regarding appointment and bylaw powers.</i>

Key Characteristics Summary Comparison: CMSM, CMSD, Board Proposal, & *Empowered Designators (cont'd)*

Key Characteristic	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	Enhanced Designator Model
Enforceability of community powers; susceptibility to lawsuits regarding Internal affairs	<p>Sole Member can invoke IRP, agrees to be bound by internal IRP process. Each SO/AC can invoke IRP. Sole Member would have legal capacity and standing to enforce IRP results in court.</p> <p>No single SO/AC has standing to bring derivative suits against fiduciaries.</p> <p>Sole Member would have clear rights to enforce results in California court and most other international courts. Participants in Sole Member unincorporated association would enforce their rights, even if not legal persons, through the Sole Member.</p>	<p>Sole Designator can invoke IRP, agrees to be bound by internal IRP process. Each SO/AC can invoke IRP. Sole Designator would have legal capacity and standing to enforce IRP results in court.</p> <p>Neither the Sole Designator nor any individual SO/AC has standing to bring derivative suits against fiduciaries.</p> <p>Sole Designator would have clear rights to enforce results in California court and most other international courts. Participants in the Sole Designator unincorporated association would enforce their rights, even if not legal persons, through the Sole Designator.</p>	<p>SO/AC can petition to invoke MEM Arbitration; upon reaching a certain threshold of SO/AC support a MEM Issue Group would be formed which (depending upon implementation) could have standing under Bylaws and legal capacity to initiate and enforce arbitration. Scope of permissible MEM arbitration (Fundamental Bylaw violation v. "new community power violation") unclear. SO/ACs may bring actions in CA courts seeking enforcement of MEM award, although this may require legal personhood.</p> <p>No single SO/AC has standing to bring derivative suits against fiduciaries. The MEM Issue Group, as a separate unincorporated association, would be part of each MEM.</p>	<p><i>Designators have standing to sue or arbitrate to enforce their appointment and removal rights over the directors and their approval rights over the governing documents.</i></p> <p><i>Would use removal powers to enforce approval rights over budget, plan, and IANA function.</i></p>
Directors and officers can bring derivative suits; directors can sue to determine incumbency.				

Key Characteristics Summary Comparison: CMSM, CMSD, Board Proposal, & *Empowered Designators (cont'd)*

Key Characteristic	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	Empowered Designators Model
Enforcement uncertainties	Sole Member will have ability to enforce its powers. Enforceability of rights of participants in Sole Member unincorporated association is unclear, especially where some participants are not legal persons.	Sole Designator will have ability to enforce its powers. Enforceability of rights of participants in Sole Designator unincorporated association is unclear, especially where some participants are not legal persons.	<p>SO/AC power limited by law, including fiduciary duties, which could result in specific Bylaws provisions being invalidated rather than enforced by a court.</p> <p>Lack of clarity (similar to status quo) regarding whether SO/ACs are designators with rights inherent under CA law (e.g., individual director removal powers).</p> <p>MEM process would result in a decision that could be enforced by the MEM Issue Group (depending upon implementation) in California state court.</p> <p>Scope of Board ability to subject exercise of fiduciary duties to review by SOs/ACs or arbitral process uncertain.</p>	<p><i>Designators will have the ability to enforce their appointment and removal powers and (assuming legal personality) their approval powers over the Articles and Bylaws.</i></p> <p><i>Designators should have indirect ability to enforce approval powers over budget, plans, and IANA functions.</i></p>
ICANN capture by single stakeholder group	<p>Likelihood: Very low likelihood of capture of Sole Member by single stakeholder group; Board controls ICANN in absence of Sole Member action on community powers.</p> <p>Consequences: If Sole Member is captured, full power of member held by single stakeholder group.</p>	<p>Likelihood: Very low likelihood of capture of Sole Designator by single stakeholder group; Board controls ICANN in absence of Sole Designator action on its community powers, which are more limited than in CMSM model.</p> <p>Consequences: If Sole Designator is captured, Designator's specified powers under Articles/Bylaws held by single stakeholder group.</p>	<p>Likelihood: Very low likelihood of capture of MEM process by single stakeholder group; Board controls ICANN in absence of enforceable MEM arbitration decision on Fundamental Bylaws.</p> <p>Consequences: If MEM process captured, MEM process may be invoked by single stakeholder; possible excessive arbitration.</p>	<p>Likelihood: <i>Extremely low likelihood of capture by single stakeholder group; would require capture of a majority of Designators, which are all independent.</i></p> <p>Consequences: <i>In the unlikely event a majority of Designators are captured by single stakeholder group, full power of Designators held by single stakeholder group.</i></p>

Key Characteristics Summary Comparison: CMSM, CMSD, Board Proposal, & *Empowered Designators (cont'd)*

Key Characteristic	Community Mechanism as Sole Member Model	Community Mechanism as Sole Designator Model	ICANN Board Proposal	Empowered Designators Model
Changes to ICANN governing documents	Moderate: Need to amend Bylaws to: - set up community mechanism as Sole Member - provide for community powers - enhance IRP - address membership structure with one member	Moderate: Need to amend Bylaws to: - set up community mechanism as Sole Designator - provide for community powers - enhance IRP	Moderate: Need to amend Bylaws to: - enhance community (SO/AC) rights - set up community mechanism - set up MEM Arbitration - address indirect/coordinated enforcement mechanisms	Minor: <i>Need to amend Articles and Bylaws with regard to approval of amendments. to clarify existing powers of appointment and removal of directors. Need to amend Bylaws</i>