

Explanatory Notes on the Draft Constitution

The PNG IX Association draft constitution is formulated based on the IPA template. These notes are provided to guide its further consideration and finalisation. Furthermore, these notes are provided only for sections of the draft that need closer attention and where the critical issue may not be apparent. Sections not discussed are thought to be easily comprehensible within the draft.

The notes must be read together with the Charter to better understand the principles and intentions with a view to providing better formulation of Clauses hence the Constitution.

Part/Clause	Main Issue(s)
<i>Part 1 Clauses - Preliminary</i>	
1. Name	The IXP members need to agree on the actual name of the Association. A suggestion has been made for consideration. It slightly defers from the title provided on the Charter where the word "Point" has been left out.
2. Objects and Purposes	This is the most critical section of the Constitution. It defines the TOR or SCOPE with which this Association relates to the national IXP. Five suggestions have been made which are derived from international best practice and consistent with the Charter. The Charter remains the prime policy document for members and captures bedrock principles for establishing and maintaining the IXP facility in the county. It is proposed that the Constitution complements the Charter and is therefore equal in status to the Charter. One suggestion is to make the Charter an APPENDIX to the Constitution.
3. Interpretation	More interpretations may be added as necessary. One suggestion is made already for the initials "IX". If members agree to keep initials "IXP" this suggestion can be amended accordingly.
<i>Part 2 Clauses - Membership</i>	
4. Voluntary Membership	Consistent with the Charter. However, once having become a member, all obligations of a member apply including those that apply for voluntary exit from the Association.
5. Membership Qualifications	Consistent with the Charter.
6. Cessation of Membership	(a) Consistent with the Charter, allowing for voluntary exit. However there is also a

	<p>Clause on Expulsion (based on IPA template) and the issue is should it remain an option if the objective is on having and keeping members to realise the full benefits of the IXP. Should there be other harsher penalties imposed on non-compliant members leaving expulsion as the last resort OR completely excluding it as an option?</p> <p>(b) Consider use of both terms “natural person” and “corporation” or simpler to use corporation given members are organisations and not individual persons.</p>
8. Resignation of Membership	<p>Consistent with the Charter, allowing for voluntary exit. However, should non-payment of fees warrant an automatic loss of membership? Goal is keep members to maximise benefit of IXP. Other penalties may be considered.</p>
12. Disciplining of Members	<p>Again, should disciplining of members include expulsion?</p>
13. Right of Appeal of Disciplined Member	<p>Main issue here is to ensure time periods or triggers are agreed by all and are consistent with prevailing industry or civil practices. The same consideration must be given to other areas of the constitution where time periods or triggers are proposed e.g. 7 days and 21 days.</p>
<i>Part 3 Clauses – The Committee</i>	
14. Powers, Etc of the Committee	<p>Main issue here is to consider inclusion of IXP Charter as one of the legal documents that the Committee of the association is subject to. Have to consult IPA on the legality of this proposal.</p>
15. Constitution and Membership	<p>(a) The issue here is to have all members represented on the Committee versus having few members representing the views of all as currently provided in the template. It is agreed that this is a corporate ownership arrangement and therefore a combined management approach where views of members are represented by themselves on the Committee, may be necessary.</p> <p>(b) Closely consider terms of office bearers. As provided in the template the terms are limited to an annual cycle. The membership may want to increase this to a 2 year cycle but no more than 3 years.</p>

	(c) May also want to consider introducing a non-eligibility clause for re-election to office mostly allowing for rotation of Presidency.
19. Casual Vacancies	There is a clause (19e) to remove a member from holding an office but do we really want to do this, and under what circumstance may this be necessary? Give careful thought to this.
21. Meeting and Quorum	<p>This is also a critical element and must be given close consideration. This section discusses meetings of the Committee or the “Management” Committee which it may come to be known. If it is agreed that all IXP members are represented on this Committee then meetings of this Committee can equally be AGMs and therefore have the ability to make decisions and determinations for the association.</p> <p>As it now appears in the template, Part 4 deals with General Meetings of the association including Annual General Meetings or AGMs as separate from Committee meetings stipulated under Clause 21. The main question then becomes whether to just have meetings (general meetings, if you like) of the Committee and do away with AGMs but only preserving and retaining the functions of the AGM within the meetings of the Committee OR to retain both Part 3/21 and 4, as originally provided in the template?</p>
Clauses 22 - 43 (end of document)	Between these clauses are other minor issues which may be easily grasped within the draft as they are either highlighted or having a different colored text. Finalising these later Clauses tends to depend on the agreement of previous “fundamental” Clauses discussed above.
Appendix 1 and 2	These are application for membership and appointment of proxy. One may wish to review them also however their finalisation also depends on dealing with the earlier issues especially of eligibility for membership, and recognition of the IXP Charter as a legal document of the Association, etc.