

DotAsia Board Meeting Minutes

Date(s) & Time:	March 30, 2022 (Wednesday) 14:01 – 15:39 (UTC+8)
Location:	Zoom Meeting Room: https://aji.asia/zoomboard
Attendees:	<p>Santanu ACHARYA Satish BABU Andi BUDIMANSYAH Arthur CHANG Edmon CHUNG Joel DISINI Murad IBRAGIMOV Alireza SALEH ^{*a} Ellen STRICKLAND ^{*b} Leonid TODOROV Rebecca CHAN (DotAsia Team) Freda CHEUNG (DotAsia Team) John Brewer (Legal Counsel) ^{*c} Chris DUNDON and SW & Co. Team (Legal Counsel) ^{*d}</p> <p>Apologies: Kashif ADEEL</p> <p>^{*a} Joined meeting during Discussion Item 2.6. ^{*b} Joined meeting after Discussion Item 1.3. ^{*c} Recused after Discussion Item 7.3.2, rejoined meeting from Discussion Item 7.4.15. ^{*d} Recused after Discussion Item 7.3.2, rejoined meeting from Discussion Item 7.4.15, left meeting during Discussion Item 7.6.</p>

No.	Action Items:	Owner	Remarks
2020.01.A01	Follow up with MONIC and CTT on obtaining clarification and voting representative for .MO.	DotAsia Team	More information to be provided after completion of re-tendering process.
2022.02.A02	Provide updates on hybrid APriGF in Sep 2022 and options for F2F Board Meeting to the Board.	Edmon CHUNG	To be updated as APriGF venue arrangements are updated.
2022.03.A01	Move forward to reach out to HSBC to seek clarifications on the banking issues.	Edmon CHUNG	Completed.
2022.03.A02	Schedule a Special Board Meeting once the confirmation received from HSBC.	Board Sec	

No.	Resolutions / Decisions:
2022.03.001	Board Meeting Minutes (Feb 26, 2022) <ul style="list-style-type: none">Approval of Board Meeting minutes of Feb 26, 2022. Approved, with no objections.
2022.03.002	Board Meeting Minutes (Feb 27, 2022) <ul style="list-style-type: none">Approval of Board Meeting minutes of Feb 27, 2022. Approved, with no objections.

Discussions:

1. Roll Call

- 1.1. It was noted that based on the discussion in Mar BFC and BGC meetings, legal counsel was invited to join Mar Board Meeting. DotAsia is looking to have additional legal support regarding Board matters, further discussion about legal support will be continued at BGC meeting.
- 1.2. With no objections from Board Members present, Satish BABU chaired the Board Meeting as BGC Chair on Mar 30, 2022 until a new Chair is elected.
- 1.3. Roll call. Those present for all or part of the meeting are included in the Attendees section.

2. Discussion of Presence of Legal Counsel

- 2.1. Question was raised on the issues where input from legal counsel may be expected. It was explained that various legal questions were raised in previous meetings, therefore, legal counsel was invited to standby for questions and clarifications.
- 2.2. Follow up question was raised on whether Board's explicit consent was obtained to the presence of legal counsel at the Board Meeting. It was explained that based on the discussions in Mar BFC and BGC meetings and in email threads, it was understood to be appropriate and that there were support for such arrangement to help the Board in its discussion.
- 2.3. Objection was raised on the presence of legal counsel since there was no explicit consent to invite legal counsel to DotAsia Board Meeting.
- 2.4. It was commented that there was an impression that BFC and BGC discussed and decided to schedule a meeting with legal counsel, where the meeting was postponed. It was also commented that the Board has been stalled on several critical issues, and during the discussion, there was no explicit disagreement for inviting legal counsel to the meeting raised.
- 2.5. Concern was raised on the understanding of consensus on critical issues without voting on each and every item.
- 2.6. It was also commented that the Board are stuck on several issues that legal guidance might be helpful for discussions. It was suggested to give it a try to obtain legal advice to address substantive issues since current concerns regarding

- legal presence are around process only rather than actual argument on the downside for the presence of legal counsel.
- 2.7. Question was raised on the hourly rates for the presence of legal counsel. It was explained the hourly rates of legal counsel is included in the engagement letter.
 - 2.8. Comment was raised that there is no need for legal advice for now based on the confirmation received from banks for having Directors from sanctioned countries.
 - 2.9. Question was raised on the agenda and the discussion items that are relevant to legal advice. Proposed agenda was presented and briefed to the Board. It was explained that Board Chair Election, discussion of Articles of Association (AA), and legal updates on litigations could benefit from legal counsel input.
 - 2.10. Question was raised on the specific issues raised by the Board in previous meetings that require input from legal counsel.
 - 2.10.1. During previous discussions at BFC and BGC meeting, it was noted that the Board raised questions specifically on the potential conflict of interest situation, and whether certain Board Members should be considered for Board leadership positions given the status.
 - 2.10.2. There were also discussions on the interpretation of Board governance in various forms. For example, whether things that were not discussed in a meeting but discussed outside of meeting should be included in minutes, and whether certain positions of the Organisation should be presented in the minutes. As well as whether it is appropriate to record detailed information about who said what in the minutes, and the consideration of the conflict of interest in terms of litigation, whether certain information should be provided to litigants against the Organisation.
 - 2.10.3. Follow up question was raised on whether the Board should go through the raised issues first before starting the next agenda of Board Chair Election. It was explained that one or two variants of the questions are usually raised during the discussion, which causes confusion and the conversation was stuck, however, it is up to the Board to decide the approach.
 - 2.11. Comment was raised that a lot of the agenda items are administrative matters that the Board should decide by themselves. Although clarifications of the Election are required, given the time spent in previous Board and Committee Meetings, it was suggested to resolve the Board Chair Election first and get the Board started running under the Chair's leadership. Thereupon, if there are specific issues that requires legal support, the Board could list them out and set up another meeting with legal counsel, which would be more efficient and productive.
 - 2.12. It was noted that legal counsel would provide inputs for the Board to make an informed decision, where the final decisions would be made by the Board.
 - 2.12.1. It was further commented that the Board should receive legal advice before making decisions.
 - 2.12.2. In the light of business continuity as well as the long-term sustainability of DotAsia, the Board should be prudent to hear professional advice and then consider whether to accept the advice.
 - 2.13. Concern was raised on Board's approval on the selection of legal counsel.

- 2.13.1. It was clarified that DotAsia legal counsel was duly appointed by the DotAsia Board, and the incoming Board should not completely overturn a decision of former Board without due discussion.
 - 2.13.2. It was also clarified that the legal counsel represents DotAsia Organisation instead of any Board Members as individuals.
 - 2.13.3. It was highlighted that due to the various reasons mentioned previously and on email via mailing list, Board Chair Election should not take place without receiving legal advice.
 - 2.13.4. It was again highlighted that additional input from a legal perspective would help the Board to make better informed decisions about the approach of the critical issues. It was also highlighted that the principle of the Board is to try to make good decisions in the best interests of the Organisation, and the Board should weigh the importance and priority of issues.
- 2.14. There was suggestion on proceeding with the agenda and further discussing the matter of retaining legal counsel presence as the first discussion item.
- 2.14.1. Discussion was raised regarding voting. It was commented that stating the logic through discussions could help others to understand the reasons behind the position. Although decisions through voting may be efficient, it is often divisive. On the other hand, decisions based on consensus through discussion are more inclusive and represent good governance.
 - 2.14.2. It was suggested to seek legal advice on whether the M&A requires the Board settle all disputes by explicit voting.
 - 2.14.3. A concern was clarified that there was no explicit consent from the Board nor notification to the Board on inviting lawyers to the meeting. It was explained that the Board was informed via mailing list along with the background and materials of other meeting agendas.
 - 2.14.4. It was again clarified that the Board did discuss and show support for having lawyers in the meeting at multiple meetings and through multiple email threads. However, if the Board feels appropriate to have a clearer process going forward, the process can be put in place and improved.
- 3. Review / Amend Agenda**
- 3.1. With no further comments received, the agenda was accepted.
- 4. Updates of SOI (Statement of Interest)**
- 4.1. Santanu reported that he was assigned to be a Director of NIXI-CSC Data Services Ltd, a newly incorporated company of NIXI (.IN), which will look after the data services of Pan India Government Companies.
- 5. Approval of Board Meeting Minutes (Feb 26, 2022)**
- 5.1. Latest version of Draft 1 was presented and action items were briefed to the Board.

- 5.2. The Feb 26, 2022 Board Meeting minutes were approved with no objections. (2022.03.001)

6. Approval of Board Meeting Minutes (Feb 27, 2022)

- 6.1. Latest version of Draft 1 was presented and action items were briefed to the Board.
- 6.2. The Feb 27, 2022 Board Meeting minutes were approved with no objections. (2022.03.002)

7. Board Chair Election

- 7.1. General Advice from Legal Counsel
 - 7.1.1. It was suggested to bring up questions the Board raised earlier in multiple meetings so that general answers and clarifications could be received.
 - 7.1.2. Pertinent matters that the Board should take into consideration before starting the Board Chair Election were presented and briefed to the Board. Matters include the banking situation and its relation to and impact on Board Chair Election, and lawsuits and its relation to privileged info and Board leadership positions.
 - 7.1.2.1. In order to address the banking situation, it is planned to (a) strengthen relationship with HSBC in Hong Kong (for DotAsia main operational account), (b) explore and establish bank account and operating entity outside of Hong Kong, and (c) update DotAsia governance documents to formalize observer role. Thus a 3-pronged approach should be pursued together immediately.
 - 7.1.2.2. Meanwhile, since there are lawsuits that certain Board Members are litigating against the Organisation, the Board needs to consider whether it is appropriate for them to take on Board leadership positions.
 - 7.1.2.3. It was also noted that there is a significant immediate risk in terms of who is put as a Board Director. If the person is from a sanctioned country, there is potential risk that DotAsia's bank account is frozen or forced to close, which would hamper DotAsia's obligations to registrars and to ICANN, and abilities to respond to legal challenges and to defend the best interest of the Organisation.
 - 7.1.2.4. Therefore, it was suggested to start with considering individuals from US or UN sanctioned countries as Observers and not directly participate in the Board leadership positions for the time being until the banking relationship and situation is reinforced.
 - 7.1.2.5. It was highlighted that this provision of Observer is already included in the Board Elections Procedure (BEP) 2022, and agreed to by Board candidates and received by DotAsia Members, where section 2.1 states explicitly that person that is from a US or UN sanctioned country will serve on the Board as an Observer Member.

- 7.4.5. It was clarified that having the legal team in the room does not mean that they would jump in all the time for their advice, and that, they would only provide advice when the Board asks them to do so.
- 7.4.6. It was commented that since no vote was taken on the matter, variation in interpretations may lead to different subjective perceptions. It was also commented that the Board should be given enough time to go through documents and materials before meetings, and should be consulted for formal consent before inviting legal counsel to a meeting.
- 7.4.7. It was noted that there is general agreement that Board Members would like to listen to the advice from legal counsel, and take them into considerations. It was agreed that proper communications should be in place and the Board should be well informed in advanced in the future to avoid the same situation.
- 7.4.8. In terms of the selection of legal counsel, it was reported that the former Board identified the best lawyer possible based on their competencies and track records, and the Board is happy with their professional support to DotAsia. However, if Board Members have another suggestions further discussions are welcome.
- 7.4.9. It was commented that as a Board Member with the fiduciary duty to the Organisation, hearing legal advice and being able to ask questions directly to legal team would be helpful for making better informed decisions regarding complex issues.
- 7.4.10. It was suggested to have the Board consider, for the best interest of the discussion, the real concern against having legal counsel in the meeting, apart from the concern on the invitation process.
- 7.4.11. It was commented that it is good to have consultations from professionals in principle. However, if the process is in place and Board Members are informed in prior about the invitation, Board Members could be better prepared with questions to be asked regarding legal and banking situation.
 - 7.4.11.1. It was explained that the purpose of inviting legal counsel to this Board Meeting is to help the Board to go through the issues that has been discussed by the Board and stuck for a while, including Board Chair Election and other matters.
 - 7.4.11.2. Meanwhile, a separate session with legal counsel could be arranged to address specific legal issues so that Board Members, especially incoming Board Members, would be able to ask questions directly to legal counsel.
- 7.4.12. It was commented that the opinion of individual Board Members should represent the position of that particular Board Member only, and opinions from Board Members should not be overruled by others. It was clarified that Board Members are welcome to raise opinions and suggestions for discussion, and the Board's opinion, as a whole, would be a collective taking into consideration different positions based on the discussion.
- 7.4.13. The question of voting was again raised. It was commented that when there is disagreement on a matter, voting would be a mechanism to resolve such disagreement. However, given that legal clarifications in terms of voting rights is required, it was suggested to seek legal advice first, so that it can be taken into account in order to move forward with the Board Chair Election.

- 7.4.14. Question was raised on whether the lawyers from Stevenson, Wong & Co. and John Brewer are acting on behalf of any Board Directors or the CEO, and whether there is any conflict of interest.
 - 7.4.14.1. It was clarified that Stevenson, Wong & Co. and John Brewer represent DotAsia in the litigation that was brought against DotAsia from Joel/DotPH. It was further clarified that The CEO and other former Board Members are implicated in the lawsuit, who have all pledged to DotAsia for the best interest of DotAsia to be fully represented through that firm, which is representing DotAsia. The lawyers do not represent any of the Board Members nor the CEO personally, but do represent the best interests of DotAsia in the defence against the litigation.
 - 7.4.14.2. It was also clarified that Stevenson, Wong & Co. is DotAsia's solicitors in Hong Kong, and John Brewer is the barrister for DotAsia in the cases that DotAsia is defending against.
- 7.4.15. Legal counsel rejoined the meeting after Board's discussion.
- 7.5. There was discussion with legal counsel.
 - 7.5.1. It was noted that although there was concern regarding the process of inviting legal counsels to the meeting, there is still a general feeling that it is valuable to hear legal advice, especially on the situation for the Board Chair Election, consideration for Board leadership positions, and the issue with sanctioned countries and the risks involved.
 - 7.5.2. In terms of the Board Chair Election, legal counsels explained that:
 - 7.5.2.1. Based on Article 48 in the current DotAsia M&A, a chairman may be elected from within the Board. This simple statement has not been an issue until the question of the chairman possibly coming from a sanctioned country.
 - 7.5.2.2. DotAsia has tried to address the issue while trying to ensure the person from sanctioned country still have the ability to participate in the Board by the way of a status like an Observer.
 - 7.5.2.3. Meanwhile, the Observer status is being included in the redraft of Articles of Association (AA), where the definition of the Observer is still under development, but in principle it can be considered as somebody who participates in the Board in the Board Meetings, but not as an official director.
 - 7.5.3. In terms of the banking situation, legal counsels explained that:
 - 7.5.3.1. They have been made aware that Arthur has been in touch with HSBC in respect of the matter and that based on the communications, there is optimism that HSBC may not be imposing the threatened sanctions related measures on the company that they were threatening to carry back in 2018.
 - 7.5.3.2. It was understood that this is part and parcel of DotAsia's approach to strengthen the relationship with HSBC in Hong Kong, which was also suggested to be the focus for actions to be taken at the moment. It is further explained that if a relationship with HSBC can be built such that they can form a different attitude on the issue of sanctioned countries as

reported, then the immediate issues of Chairmanship and whether certain Board elect need to be considered as Observers may not exist anymore, and concerned Board Members could participate in the Board as a full Director.

- 7.5.3.3. Regarding the next step, it was suggested that the legal counsel could be involved in formally approaching HSBC to obtain confirmation that Board members with nationalities from sanctioned countries are acceptable as long as s/he fulfills the criteria mentioned in previous email communications, then DotAsia as a company will not suffer from the banking issue of HSBC. In that case, the immediate issue that the Board faces at the moment could be eased, but that does not mean that this issue will not arise in the future.
- 7.5.3.4. It was added that the first objective should be to strengthen the existing relationship with HSBC and avoid any potential destabilization, which is also included in the legal advice on May 2021. Nevertheless, it is cautioned that such decision from HSBC may not be forthcoming in a short period of time.
- 7.5.3.5. Regarding the update of DotAsia Governance documents to formalize Observer role in the 3-pronged approach, legal counsel agreed that it should be done in any event since no one knows what further problems might arise at any time, and it could be helpful to have that mechanism as a safety net.
- 7.5.3.6. Regarding the approach of exploring and establishing bank account and operating entity outside of Hong Kong, it was explained that it is fraught with difficulty and is not helpful to actually solving the problem if DotAsia needs to continue transacting in US currency. It was further explained that wherever another operating entity might be based, or with whom the operating entity might have an account, ultimately the clearing of US dollar funds has to be incorporated with the US banking system. If the existing problems cannot be resolved, the organization may still risk being implicated if and when US authorities apply pressure to banks clearing in US dollars.
- 7.5.4. Question was raised that based on the M&A and the bank's position as mentioned in email communications, whether there is therefore no problem now for anyone on the Board to be an official Board Director or to be elected as the Chairman of the Board.
 - 7.5.4.1. It was explained that based on the email from Arthur explaining the situation, that, as long as Board Member(s) from sanctioned countries do(es) not "control" the Board in any way and there are no financial dealings with such individuals, it should be acceptable to HSBC. Furthermore, it also appeared to indicate that is no issue with Board Member from Russia at this time. If these can be confirmed, based on the existing information, the issues that the Board is currently facing, in terms of the Board Chair Election and who should or should not be listed as an official Board Director might disappear.
 - 7.5.4.2. However, it is cautioned that, existing information is only an informal talk with HSBC, and should be confirmed. Also, that the Observer status proposed by legal counsel remains useful in the future as a fallback to ensure that the appointment of

persons from sanctioned countries to the Board would not affect banking requirements. With these measures in place, then what's concerning the Board at the moment in this regard would disappear.

- 7.5.5. The Board appreciates Arthur's effort on the issue and it was understood that a great pathway has been identified to address the issue with a potential to resolve the issue in the next few weeks. However, it was highlighted that DotAsia is still under immediate risk until the confirmation is received from HSBC.
 - 7.5.5.1. It was highlighted that if the Board wish to appoint individual(s) with nationalities from sanctioned countries as Chairman, then that will necessarily mean an update to the Companies Registry with the individual(s) as official Board Directors, and as matters stand with HSBC that is in contrary to what HSBC requested to be addressed back in 2018.
 - 7.5.5.2. It was further noted that, if the individual with whom Arthur has been discussing is sufficiently senior, and has a compliance role or is responsible for compliance, then the situation sounds very optimistic. Nevertheless, it was also reminded that it is possible that people in compliance tell very senior people in the bank what they should and should not do.
- 7.5.6. It was asserted that Russia is not currently a sanctioned country under US or UN sanctions, explaining that although there are sectoral sanctions and sanctions against individuals, the country itself is not under sanctions. It was commented that the distinction between sectoral, individual or country sanctioned is very helpful and appreciated.
- 7.5.7. Comment was raised that while no business shall be transacted with individuals or organizations under sanctions, serving on the DotAsia Board as a volunteer does not imply any business transactions.
 - 7.5.7.1. From this perspective, it was clarified that DotAsia Board Directors, does not receive any remuneration or any other kinds of allowances from DotAsia.
 - 7.5.7.2. It was noted that further clarification from the banks will be required on whether this is a relevant point. With reference to the DotAsia M&A, it is clearly stated that no Director other than the CEO can be remunerated.
- 7.5.8. An anecdotal experience was raised as reference. It was also noted that concerned individuals have changed their country of residence to another country.
 - 7.5.8.1. It was explained that the only conversations taken into consideration on this issue were in respect of the situation in 2018. If indeed, HSBC is prepared and would very easily accept individuals from sanctioned countries and countries with sectoral sanctions, then there would appear to be no problem in proceeding to include such individuals as official Board Directors.
 - 7.5.8.2. It was noted that the fact that the anecdotal experience shared can be useful for understanding the situation, it seems to lean in favor of banks not having a problem with such particular individuals.

- 7.5.9. Question was raised on whether the legal advice received in May 2021 involved correspondence directly between legal counsels and the bank. It was clarified that the barrister takes instructions from instructing solicitor, and that the solicitor obtains full information from the client DotAsia.
- 7.5.10. It was identified that further questions from the Board can be gathered and sent to legal counsel for clarifications for several rounds to completely answer the questions.
- 7.5.11. It was commented that the legal team is helpful for clarifications, however, unless there are more questions to follow up, it may not be necessary to have legal team join for the Board Chair Election.
- 7.6. It was noted that Alireza currently holds a Canadian residency and that he would be able to open a personal HSBC account in Canada if it could help solve the problem.
- 7.7. There was suggestion to send a letter to HSBC copying the Board to ask for clarifications.
 - 7.7.1. It was highlighted that the HSBC contact is already in hand, that DotAsia could reach out to them and seek clarifications soon regarding the issues.
 - 7.7.2. It was discussed and agreed to move forward to reach out to HSBC to seek clarifications on the issue. (2022.03.A01)
 - 7.7.3. It was discussed and agreed that once the confirmation received from HSBC, a Special Board Meeting will be scheduled through Doodle poll to further discuss the matter. (2022.03.A02)
- 7.8. Question was raised on taking nomination and voting for Board Chair Election. It was explained that there are risks in jumping into the Election directly, which is the reason why clarifications are required from HSBC before moving forward.

8. Other agenda items

- 8.1. Discussion deferred to next Board meeting.

9. Next Board Meeting Schedule

- 9.1. Upcoming Regular Board Meeting dates at UTC 06:00 (HKT 14:00) were proposed as follows:
 - Apr 27
 - May 25
 - Jun 29 (ICANN on Jun13 – 16)