

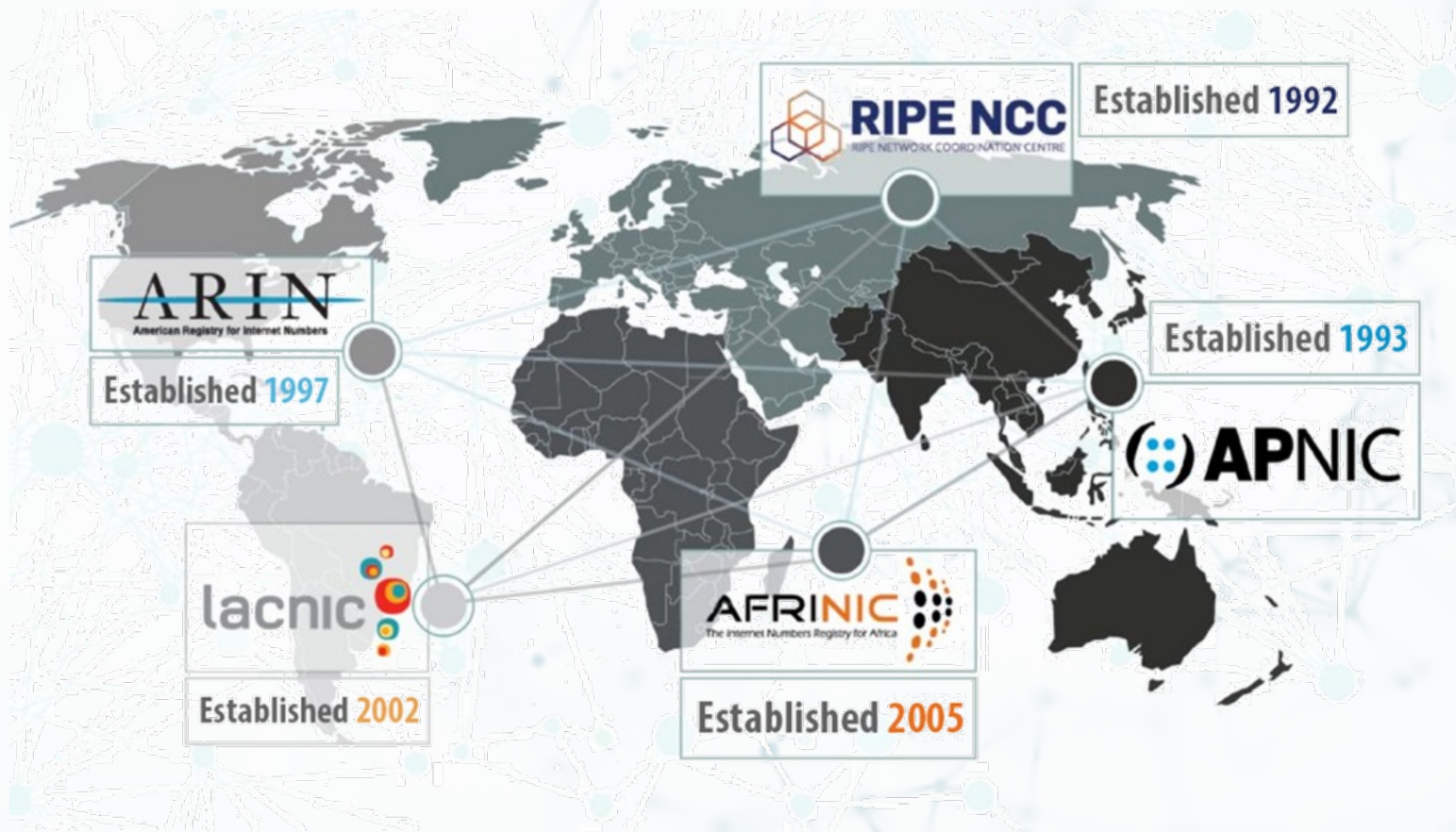


Global RIR Update

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American Registry for Internet Numbers (ARIN)

February 2024

The Regional Registry System



Background



ARIN does not normally comment on disputes or related litigation occurring at another Regional Internet Registry (RIR).



However, ARIN has a responsibility to keep its community reasonably informed about the status of the Internet Number Registry System, and this includes the status of AFRINIC.



Notable Legal Developments

Notable Legal Developments - 2020

- AFRINIC completed a Registry Audit.
- More information was required from an AFRINIC customer – “Cloud Innovation” (principal, Mr. Lu Heng).
- AFRINIC determined that resources were not being utilized for the purposes for which they were issued and would be revoked (after a suitable time to allow customer migration of those resources).
- Mr. Lu and his businesses disputed AFRINIC's authority to enforce this provision of its customer agreement.

Notable Legal Developments - 2020

- Mr. Lu engaged in several legal actions in the courts in Mauritius to prevent having to return the address blocks to AFRINIC (majority of cases involve Cloud Innovation Limited [CIL]).
- One motion froze AFRINIC's accounts, and thus had the potential to hamper AFRINIC's operations.
- After approximately 2.5 months, AFRINIC successfully had the freezing order removed.

Notable Legal Developments - 2022

- Injunction entered in Court that prevented AFRINIC from holding its annual elections just prior to the AFRINIC Annual General Members' Meeting (AGMM).
- As a result, after the AGMM, the AFRINIC Board of Directors lacked sufficient directors to meet quorum – thus unable to conduct business or convene a subsequent AGMM for purposes of holding an election for new directors.

Notable Legal Developments - 2022

- Several unsuccessful petitions made to the court for appointment of temporary directors.
- AFRINIC CEO Eddy Kayihura's employment was not extended beyond November 2022 by the Board Chair Benjamin Eshun (Eshun).
- Absent a quorate Board of Directors and without a CEO, AFRINIC's staff faces challenges in operating the registry.

Notable Legal Developments - 2023

- **13 April** - Filing by a director/registered member of AFRINIC seeking the ability to hold elections.
- **12 September** - An Order entered appointing Official Receiver (OR) of Mauritius to oversee the affairs of AFRINIC, hold an election for the AFRINIC Board within six months, and work toward the appointment of a CEO.

14 September 2023 - NRO Statement on Appointment of an Official Receiver for AFRINIC:



"The NRO welcomes recent developments in the legal proceedings affecting AFRINIC. With successful execution, these developments will restore AFRINIC to functional governance with the election of an Executive Board and appointment of a CEO."



Notable Legal Developments - 2023

- **28 September** - Appeal lodged by AFRINIC's external litigation counsel to challenge Order appointing the OR - resulting in an automatic stay of Order and suspension of OR's authority.
- **2 October** - Filing by CIL challenging acceptance of AFRINIC's appeal, suspending the automatic stay and restoring authority of the Official Receiver (OR).
- **4 October** - Injunction/gag Order entered preventing previous directors Eshun and Viv Padayatchy from acting on behalf of AFRINIC and/or interfering with the OR.

Notable Legal Developments - 2023

- **16 October** - Eshun obtains discharge of injunction/gag Order. In addition, there is a discharge of suspension of automatic stay of the OR Order [Order of 12 September 2023], and thus OR's authority is again suspended pending the hearing of the appeal against the OR Order.
- **23 November** - Eshun made an application to the Supreme Court to appoint three (3) directors for the purposes of, amongst others, holding the Annual General Members Meeting (AGMM) - application was set aside by Court.
- **28 November** - Eshun appealed the Order and this appeal was also set aside. It is understood that Eshun is now seeking leave to appeal to the Judicial Committee of the Privy Council in the U.K.

Notable Legal Developments - 2024

- **2 February** - The Supreme Court issues a judgment setting aside the application of Logic Web Inc. to intervene in the appeal against the OR Order.

- **Currently** - Awaiting two determinations:
 - 1) Appeal against the OR Order which is yet to be heard.
 - 2) Eshun's appeal against the setting aside of his application to appoint Directors for the purposes of holding the AGMM.

A light blue background with a faint, abstract network diagram consisting of interconnected nodes and lines, suggesting a digital or network theme.

ARIN's Assessment

AFRINIC – Status Summary



There remains significant pending litigation.



There are insufficient directors to convene a Board Meeting or call a Members Meeting (which would be necessary to elect additional directors).



Petitions to court for appointment of temporary directors have not been granted.



There is a pending appeal to Order appointing OR to oversee AFRINIC and hold elections - an appeal process likely to take a year (or more).



At this time, AFRINIC operations do not appear to be significantly impacted: registry services, customer requests, etc. are all proceeding as usual - a testament to the dedication of AFRINIC staff.

AFRINIC – Next Steps



Next steps are still to be determined, as at the present time there is no clear path to a member election for new directors.



Monitoring for further development regarding the current challenge to the appointment of an OR to oversee AFRINIC's affairs, including the holding of an election for the AFRINIC Board.



ARIN is standing by to assist and has offered technical and/or financial support as needed (the other RIRs and ICANN have extended similar offers of support).

Recent Number Resource Society (NRS) Blog Post

- NRS recently released a blog post commenting on AFRINIC.
- NRS specifically referenced former AFRINIC Board Chair Eshun.
- Previously, under the OR, a Court directed effort was to be underway to hold elections with the aim of seating a quorate AFRINIC Board.
- Due to Eshun's most recent Court filings, the efforts of the OR have been suspended.

Recent Number Resource Society (NRS) Blog Post

- Our understanding is that Eshun's term has expired; however, he continues to hold himself out as the AFRINIC Board Chair.
- While the NRS blog post is merely one perspective on the status of the situation at AFRINIC, the Court filings are factual and have prevented further work at this time on the part of the OR to hold AFRINIC Board elections.
- We continue to observe the developments at AFRINIC, fully support the staff in their efforts to maintain operation of the AFRINIC registry, and sincerely hope and trust that all parties involved are acting in the best interests of the AFRINIC organization and the AFRINIC community.



Thank You

Questions or
Comments?