

Change of CENL statutes

Actions required:

- Discussion on proposed changes to CENL statutes
- EC are asked to agree on the proposed changes

At its meeting on 28 September 2022 at the German National Library in Frankfurt, the EC stated that it is likely to become the new normal that not all its members will be able to attend an EC meeting. As the statutes require that that all members must be present in order to pass valid resolutions a solution has to be found here.

All EC members present agreed that for this reason the statutes should be amended so that a meeting will have a quorum even if not all members are present. The secretariat was asked to propose amendments of the statutes for discussion at its meeting in January 2023.

The latest change of the statutes was 3. October 2018. Article 14 of the statutes delivers the basis for any changes.

Article 14 reads as follows (the crucial sentences are marked in red):

Amendments to the Articles of Association.

Article 14.

1. The **Executive Committee is authorised to amend** the Articles of Association.
2. A resolution by the Executive Committee to amend the Articles of Association will require a **majority of two-thirds of the votes cast at a meeting in which all the members of the Executive Committee are present**. If not all the members of the Executive Committee are present or represented at the meeting in which a proposal to amend the Articles of Association is to be considered, **a second meeting will be convened and will be held no earlier than two and no later than four weeks after the first meeting**. A valid resolution on the proposal submitted to the first meeting may be adopted in this second meeting, irrespective of the number of members of the Executive Committee present or represented, provided such a resolution is adopted by a majority of two- thirds of the votes cast.
3. The **notice convening a meeting in which an amendment to the Articles of Association is to be considered, must enclose a copy of the proposal quoting the verbatim text of the proposed amendment**.
4. A resolution to amend the Articles of Association requires the **approval of the Board of Directors**, who can only grant such approval by a **majority of two-thirds of the votes** cast at a meeting at **which two-thirds of the directors are present**. Paragraph 2 of this article will be applicable 'mutatis mutandis'.
5. Contrary to the provision of paragraph 4, a resolution to amend the Articles of Association, requires the approval of all the Directors if and insofar as the obligations of the Directors will be increased as a result of such an amendment.
6. A resolution to amend the Articles of Association **will not become effective until a notarial record has been drawn up**. Every member of the Executive Committee is authorised to have such a deed executed.

Proposed changes

The secretariat attentively proved the statutes and proposes changes in articles 5, 8 and 9.

The changes proposed for article 9 are intended to enable the EC to act even if one of its members is unable to attend one or more meeting. It will allow the Executive Committee to take decisions in reasonable time:

Executive Committee; the decision-making process.

Article 9.

2. All resolutions in respect of which no provisions to the contrary have been made in the present articles of Association will be adopted by an absolute majority of the votes cast in a meeting at which ~~all~~ **the majority of the** members of the Executive Committee are present. ~~If not all the members are present, a second meeting will be convened and will be held no earlier than two and no later than four weeks after the first meeting. A valid resolution may be adopted in this second meeting, provided at least the majority of the members of the Executive Committee are present or represented, and provided the resolution is adopted by an absolute majority of the votes cast.~~

6. The majority of the members of the Executive Committee attending the meeting either:

(a) in person;

(b) by telephone or videoconference; or

(c) by proxy,

shall constitute a quorum

7. Resolutions of the Executive Committee may, instead of at a meeting, be passed in writing, provided that all members of the Executive Committee are familiar with the resolution to be passed and none of them objects to this decision-making process within ~~two (2) months~~ **one (1) month** upon receipt of the proposed resolution.

The change proposed for article 8 refers to the size of the Executive Committee.

So far, there is only a minimum size for the group. At the time being, the EC consists of 7 members which seems to be the right size. Given the fact that the foundation has (only) 46 members, 7 members mean that more than 15% of them are members of the EC.

Executive Committee, composition, appointment and resignation.

Article 8.

1. The foundation's Executive Committee will consist of a number of members, at least three persons **<but no more than 7>**, to be fixed by the Board of Directors. [...]

The change proposed for article 5 is a consequence of the changes proposed for article 9.

Directors.

Article 5.

[...]

3. A director will cease to be a director:

- a. as a result of his resignation as director of a national library;
- b. as a result of his death;
- c. by giving notice of termination;
- d. if he goes into bankruptcy, involuntary liquidation or applies for a suspension of payments;
- e. if he is made the subject of a guardianship order;
- f. as a result of his expulsion by the Board of Directors; a resolution to this end requires a majority of two-thirds of the votes cast in a meeting at which two-thirds of the foundation's directors are present or represented;
- g. as a result of his/her expulsion by the Executive Committee; a resolution to this end requires an absolute majority of the votes cast in a meeting at which ~~all~~ **the majority of the** members of the Executive Committee are present or represented. With due consideration of the preceding sentence, the Executive Committee may only resolve on the expulsion, if a director:
 - fails to fulfil his/her obligations under Article 5 paragraph 2 during a period of more than twelve months (the "Default Period");
 - received three months after the Default Period a written notice stating his/her default from the treasurer of the foundation (the "Notice"); and
 - does not fulfil his/her financial obligations under Article 5 paragraph 2 within one month after receipt of the Notice.

[...]

For information only

IFLA Statutes:

Article 16

16.3 A simple majority of the members of the Governing Board attending the meeting either:

- (a) in person;
- (b) by telephone or videoconference; or
- (c) by proxy,

shall constitute a quorum.

LIBER Statutes

Meetings and decision making.

Article 8

6. Resolutions can be adopted only at a meeting at which at least the majority of the Board members are present unless other provisions have been made in the present Articles of Association.