

Detailed Chronology of Cloud Innovation v AFRINIC to date, including background prior to initiation of litigation

Letter from AFRINIC to Cloud Innovation, June 23, 2020:

2026 records pertaining to the company appear to be inconsistent with what is visible in the global routing [sic].

They claimed that the country of BGP origination was inconsistent with the descriptions of the registered usage of the IP Number Resources and alleged that this constituted a breach of “Section 5.3.2 of the Policy Manual as well as clause 4(c)(ii) of the Agreement”

Section 5.3.2 of the CPM reads as follows:

5.3.2 All allocations, PI assignments, PA assignments, sub-allocations and other types of resource assignments will be registered in the AFRINIC database. Any unregistered resources will be considered invalid. The registration data (name, IP block/range, contacts, status, etc..) must be correct at all times. This is necessary to support network operations.

Many of our customers operate international networks and it is not uncommon for their business address to be in a different country than they are using some subset of the addresses. This is common among many of AFRINIC's larger members and after a thorough review, we determined that the registration data was (mostly) correct. Any place we were able to identify an actual discrepancy was promptly corrected. We informed AFRINIC of same.

- **“That most of the utilization records...show a usage that is not consistent with the ``needs” expressed in accordance to the Agreement.”...”Attention...to Clause 6(d)(iii) of the Agreement”...”whilst Clause 2(d) of the agreement provides for changes occurring after the receipt of an application for IP Number Resources, Cloud Innovation failed to notify AFRINC”...breach of Clauses 2(d), 4(c)(i) and 6(d)(iii) of the agreement.**

The relevant clauses in the agreement read as follows:

2(d)

where the original information submitted has been the subject of any change, same has to be notified promptly, accurately and full to AFRINIC by an authoritative and valid contact;

...

4(c)(i)

Commits itself to using the services solely for the purpose for which it was requested.

...

6(d)(iii)

that it is bestowed with an exclusive right of use to those number resources within the ambit of the “need” which it has justified in its application and for no other purpose during the currency of the present agreement.

At the time the resources were reallocated, the associated information was updated in WHOIS as was our understanding of the meaning of 2(d). The new utilizations of the resources were, in our opinion still consistent with the original justified purpose and remain compliant with 4(c)(i) and 6(d)(iii).

The resources continue to be utilized to number customer and internal network hosts, consistent with the original application and with the normal business of any ISP. There is no distinction in AFRINIC policy between need to number a customer connected via a VPN, via a point-to-point link, via an MPLS cloud, or via any other form of connection or even a customer which gets its connectivity services from another provider. Indeed, in policy, there is nothing which distinguishes any form of assigning space to end users to number their hosts. The relevant section is 2.3:

2.3 Local Internet Registry (LIR)

A Local Internet Registry (LIR) is an IR that receives allocations from an RIR and primarily assigns address space to 'end-users'. LIRs are generally ISPs. Their customers are other ISPs and possibly end-users. LIRs must be members of AFRINIC.

Further relevance is contained in section 4.0:

4.0 Hierarchy of number resource distribution

Internet Number Resources are distributed in a hierarchical structure in which IANA (The Internet Assigned Numbers Authority) allocates blocks of number resources to AFRINIC, to be redistributed throughout the African region.

AFRINIC redistributes to its members and also delegates to them the authority to make assignments and sub-allocations to customers where appropriate and in accordance with the policies and procedures described in this document.

Note that AFRINIC by policy “also delegates to them the authority to make assignments and sub-allocations to customers where appropriate and in accordance with the policies and procedures described in this document”. That means that so long as the assignment is compliant with the policies in this document, that is within the company’s authority as a member LIR.

There is no policy which specifically requires that an address assignment be associated with connectivity. While such a requirement is a common assumption, it does not exist in policy, nor the bylaws, nor the RSA.

The governing documents in question can be reviewed here:

[Bylaws](#)

[CPM \(Policies\)](#)

[RSA \(Agreement\)](#)

- **The biggest fallacy of the entire claim from AFRINIC:**

“That the majority of the IP Number Resources [sic] allocated to Cloud Innovation Ltd[sic] by AFRINIC are not originating services within the AFRINIC service region as required by section (6)[sic] of the AFRINIC Bylaws. We find it apt to remind you that “Membership” is clearly and unequivocally defined in section 6 of the Bylaws. Consequently, your attention is drawn to the fact that IP Number Resources allocated by AFRINIC must originate services within the defined region, except as regards those issued under the “SOFT-LANDING Policy”. For IP Number Resources allocated under this policy, it is permissible to use a part of their resources only for connectivity back to the service region. Unfortunately, your current situation does not conform to the provisions of these two guiding documents.”

So let’s review the relevant sections. Let’s start with section 6 of the bylaws:

6) MEMBERSHIP

6.1) Subject to the other provisions of this Article, membership shall be open to:

- i. any Person who is geographically based within, and providing services in the African region, and who is engaged in the use of, or business of providing, open system protocol network services; or
- ii. any other Person who is approved by the Board or the members.

[Amended at the 2020 AGMM]

6.2) Members shall be Registered Members, Resource Members or Associate Members.

6.3) An individual who shall be elected as Director in accordance with Article 13 below. The Chief Executive Officer shall automatically also be appointed as a Registered Member, provided that the said individual shall sign such forms as may be prescribed by the laws of Mauritius and contribute Rs. 500 (five hundred Mauritian rupees only) in the event of the Company being wound up according to Article 22.

6.4) Resource Member - A legal entity (local Internet registry or end-site) shall be deemed to be a Resource Member of AFRINIC after it has completed the following formalities cumulatively:

- i. justified its need for the right to use Internet Number Resources to AFRINIC;
- ii. signed AFRINIC's Registration Service Agreement; and
- iii. paid the relevant setup and membership fees related to Internet Number Resources allocated/assigned to it by AFRINIC Registration Service.

We agree with AFRINIC's statement that the requirements for membership are clearly and unequivocally spelled out in section 6. However, we do not think that they actually read section 6 before sending this notice. The language clearly requires that the company be:

+any Person...

Cloud Innovation is a corporation, so qualifies as a legal person

+geographically based within, and providing services in the African region

Cloud Innovation is based in the Seychelles, which is in the African region, Cloud Innovation offers its services in many countries throughout Africa, thus meeting the requirement that we are offering services within the region.

+...is engaged in the use of, or business of providing,[sic] open system protocol network services; or

Cloud Innovation is engaged in providing a variety of services that use or are built upon open system protocol network services, so we meet both of those criteria, while either one is sufficient.

+ any other Person who is approved by the Board or the members

This clause is included for completeness, but does not apply to Cloud Innovation.

So according to 6.1, membership should be open to us.

Section 6.2 defines the types of members. We were (and should be reinstated as) a Resource Member (per court order).Section 6.3 does not apply and talks about board members (Registered Members), Section 6.4 talks about the requirements of becoming a Resource member.

(i) justified its need for the right to use Internet Number Resources to AFRINIC;

Presumably the fact that AFRINIC issued us multiple allocations is sufficient proof that this requirement was satisfied.

(ii) signed AFRINIC's Registration Service Agreement; and The RSA was signed in 2013 and remained in force up to the point where the board, acting in bad faith and in undue haste after having the injunction set aside based on a technicality around the standing of the individuals to file the case and nothing to do with the merits of the case, terminated the membership of Cloud Innovation and the associated RSA.

(iii) paid the relevant setup and membership fees...

Cloud Innovation has consistently paid its AFRINIC fees completely and on time throughout its membership in AFRINIC (since 2013).

Further, AFRINIC's claim that the "SOFT-LANDING Policy" creates the ability to utilize resources out of region is a fallacy. Nothing in policy outside of the limitations expressed in SOFT-LANDING precludes out-of-region utilization of resources. The language in SOFT-LANDING creates a new restriction, rather than creating a new right to expanded use. This is another example of AFRINIC staff choosing arbitrary and capricious ways to interpret the governing documents which are contrary not only to a plain text interpretation of the documents in question, but also contrary to years of precedent and the outcome of a prior PDWG attempt to develop a policy prohibiting out of region use (strongly resisted by the community and ultimately withdrawn by the author).

Cloud Innovation response July 13, 2020:

On July 24, 2020, Cloud Innovation submitted a detailed response to AFRINIC rebutting each of AFRINIC's points above. Those rebuttals were much along the lines of the text above, and will not be repeated here to that extent.

AFRINIC included with their original letter a spreadsheet detailing the prefixes in terms of routes viewed from some particular view of the BGP table from some particular undisclosed looking glass or router. We did point out that the advertisement of a covering aggregate route while registering more specifics that have a common routing policy is common practice, since AFRINIC's assertions appeared to incorporate ignorance of this fact. We also submitted a spreadsheet in our reply which detailed 3 specific problems with AFRINIC's approach to their BGP analysis of the advertisement of our prefixes.

At the end of that letter, we made it quite clear that we hoped AFRINIC would be satisfied with our response and close the matter, but that we reserved all of our rights and would take any and all actions necessary to protect them.

Strange notice in our renewal confirmation received over the New Year.

After submitting our letter of July 13, we considered the matter likely closed, especially after months went by without further word from AFRINIC. We received a bizarre notice included with our renewal confirmation which stated:

Dear Member,

Re: Registration Service Agreement Renewal Notice

As you may be aware, the Registration Service Agreement ("the Agreement") existing between AFRINIC and Cloud Innovation Ltd is due to expire today, 31 December 2020 consistent with clause 11(a)(i) of the Agreement.

We also note from our records that Cloud Innovation Ltd is presently subject to an on-going review by AFRINIC pursuant to clause 4(c)(iii) of the Agreement. In the circumstances, please kindly note that any renewal of the Agreement shall be subject to and without prejudice to the aforesaid review undertaken by AFRINIC. Consequently, AFRINIC reserves its right to take such action as it may deem appropriate consistent with clause 11(d)(iii) of the Agreement.

Yours faithfully,
AFRINIC Hostmasters

AFRINIC Letter March 10, 2021

Other than the strange notice included with our renewal, we received no other indication that anything was amiss until AFRINIC sent a letter on March 10, 2021. The March 10 letter was almost identical in form and content to the June 23, 2020 letter above, including a repeat of the same generic accusations of misregistration based on a mismatch between country of origin and registration of country on the ASN and a repeat of the assertion that it was against policy to utilize resources issued by AFRINIC outside of the AFRINIC service region.

A key aspect of the accusations contained in the March 10 letter, however, is that none of the allegations of breach contained specific actionable details, but rather resorted to vague claims of "inconsistency" or other unspecified defect. Below are some excerpts from the actual letter which are exemplary of this fact:

4. Whilst we have taken note of your effort of maintaining the necessary records as you have stated in your aforesaid letter, yet we also observe that your records appear to be inconsistent, and which constitutes a breach of clause 5.3.2 of the CPM wherein it stated that *“the registration data (name, IP block/range, contacts, status, etc..) must be correct at all times”*.

5. We further note that the current usage of part of Cloud Innovation Ltd's allocated space are no longer consistent with the *“needs”* expressed in accordance with the RSA. We hereby refer you to clause 6(d)(iii) of the RSA whereby Cloud Innovation Ltd expressly acknowledged and agreed that the *“right of use”* of IP Number Resources is bestowed within the ambit of the *“need”* which is justified in its application and for no other purpose during the currency of the present agreement.

6. Notwithstanding the above and despite the explicit provision of clause 2(d) of the RSA, we regretfully record Cloud Innovation Ltd's failure to notify AFRINIC of the aforementioned changes promptly, accurately and fully by an authoritative and valid contact.

Trying to work it out

In light of the fact that AFRINIC's March 10 letter showed no sign of AFRINIC changing their position and contained no actionable defects which we could resolve, we reached out and attempted to have a discussion with the AFRINIC CEO to try and come to a resolution. According to our team members that attended the meeting (I was not present), this did not go well. No sooner had our team member started to explain our position and clarify our interpretation of the bylaws than AFRINIC CEO interrupted and seemed quite offended. AFRINIC CEO was utterly unwilling to accept any criticism of AFRINIC's role in this process and made it quite clear that if we wanted to work this out, he was purely looking for us to offer to change something on our side and express some form of contrition for our wrongdoing. Since it remains our position that we have, at all times, acted in good faith and in compliance with the policies, it was clear that this meeting was not going anywhere positive for either side and it ended shortly thereafter.

As a result, it was clear to Cloud Innovation that AFRINIC was determined to stick to their erroneous interpretation of their governing documents and was likely determined to revoke our membership and consequently our resources. Given the vast number of end users, companies, staff, etc. at risk in this situation, we felt we had no remaining alternative but to seek protections from the courts of Mauritius.

Court Case

Most of the subsequent events are detailed in the notice published by Cloud Innovation on 14 July, 2021, so only a summary of the timeline is included here.

- In March 2021, a first injunction was filed by Cloud Innovation against AFRINIC to prevent unlawful termination as member. An interim order was granted in favor of Cloud Innovation.
- On 7 July 2021, a judgment is delivered setting aside the interim order on the basis of a preliminary objection .
- On 8 July 2021, Cloud Innovation files an appeal against the judgment of 7 July 2021 and an application for stay of execution thereof.
- On the very next day of the judgment, that is on 8 July 2021 AFRINIC board meets and decides to terminate Cloud Innovation's Membership immediately without (i)affording Cloud Innovation any opportunity to address the alleged breaches, (ii) waiting for the normal cooling off period and (iii) without regard to any appellate process 8 July, 2021
- AFRINIC alters the WHOIS entries for all Cloud Innovation resources and makes public statement 8 July, 2021
- On 13 July 2021, Cloud Innovation seeks urgent relief in another law suit against AFRINIC and an interim order is issued by the Honorable Judge in Chambers of the Supreme Court of Mauritius in favor of Cloud Innovation, preventing AFRINIC, amongst others, from reclaiming its IP resources.