

Last Updated: November \_\_, 2009

**BY-LAW NO. 2**

**A by-law relating generally to the transaction of the business and affairs of  
TORIX INTERNET EXCHANGE COMMUNITY  
(the Corporation)**

**Head Office**

1. Until changed in accordance with the *Corporations Act* (Ontario) (the “*Act*”), the head office of the Corporation shall be in the City of Toronto, in the Province of Ontario.

**Conditions of Membership**

2. Membership in the corporation shall be limited to persons interested in furthering the objects of the Corporation and shall consist of
  - a. those corporations who have agreed to peer on the network application point (**NAP**) at 151 Front St. W, Toronto, Ontario and have received the approval of the board of directors of the Corporation (**voting members**) and
  - b. those individuals elected as directors from time to time (**non-voting members**).
3. There shall be no membership fees or dues unless otherwise directed by the board of directors.
4. Any member may withdraw from the Corporation by delivering to the Corporation a written resignation and lodging a copy of the same with the secretary of the Corporation.
5. Any member shall be required to resign by a vote of three-quarters of the directors.

**Members’ Meetings**

6. The annual or any other general meeting of the members shall be held within 15 months of the previous annual or any other general meeting, in the city where the head office of the Corporation is situated.
7. At every annual meeting, in addition to any other business that may be transacted, the report of the directors, the financial statement and, should the Corporation be required to have audited financial statements prepared, then the report of the auditors shall be presented and auditors appointed for the ensuing year. The members may consider and transact any business either special or general at any meeting of the members. The board of directors or the president or vice-president shall have power to call, at any time, a general meeting of the members of the Corporation. The board of directors shall call a special general meeting of members on written requisition of members carrying not less than 15 percent of the voting rights. Members present in person or by proxy at a meeting will constitute a quorum.

8. Fourteen days' written notice shall be given to each member of any annual or special general meeting of members. Notice of any meeting where special business will be transacted shall contain sufficient information to permit the member to form a reasoned judgment on the decision to be taken. Notice of each meeting of members must remind the member that it has the right to vote by proxy. Each voting member present at a meeting shall have the right to exercise one vote. A voting member may, by means of a written proxy, appoint a proxyholder to attend and act at a specific meeting of members, in the manner and to the extent authorized by the proxy.
9. A majority of the votes cast by the voting members present shall determine the questions in meetings except where the vote or consent of a greater number of members is required by the *Act* or these By-laws.
10. No error or omission in giving notice of any annual or general meeting or any adjourned meeting, whether annual or general, of the members of the Corporation shall invalidate such meeting or make void any proceedings taken thereat and any member may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat. For purpose of sending notice to any member, director or officer for any meeting or otherwise, the address of the member, director or officer shall be his last address recorded on the books of the Corporation.

#### **Board of Directors**

11. The property and business of the Corporation shall be managed by a board of directors, comprised of a minimum of three directors. The number of directors shall be determined from time to time by a majority of the directors at a meeting of the board of directors and sanctioned by an affirmative vote of at least two-thirds of the members at a meeting duly called for the purpose of determining the number of directors to be elected to the board of directors.

#### **Remuneration**

12. The directors shall serve as such without remuneration and no director shall directly or indirectly receive any profit from his position as such; provided that a director may be paid reasonable expenses incurred by him in the performance of his duties. Nothing herein contained shall be construed to preclude any director from serving the Corporation as an officer or in any other capacity and receiving compensation therefor.

#### **Becoming a Candidate for the Board of Directors**

13. To qualify for election as a director, an individual must, at the close of nominations:
  - a. be at least 18 years of age
  - b. not be disqualified by the *Act* from becoming or acting as a director and
  - c. have been nominated by a voting member to stand for election as a director.
14. No more than one employee of a voting member is eligible to be a director at a time.

## Voting for Directors

15. The Corporation must, at least four weeks before the close of nominations:
  - a. give notice of the election to each member
  - b. solicit nominations
  - c. specify the date for the close of nominations and
  - d. appoint an election officer who shall conduct the election.
16. Current members of the Corporation at the time nominations close will be automatically eligible to vote in the current election unless they formally request to withdraw their membership from the Corporation.
17. Only the member's designated member representative (**DMR**) is permitted to vote on behalf of the member. A notice will be sent to all current DMR contact information shortly after the close of nominations to verify that the information is correct. It is the responsibility of each member to ensure that the DMR is correct. The cut off to update DMR contact information will be 24 hours before voting is set to begin.
18. The Corporation must, along with notice of an election, notify each voting member of the manner in which the member may request election materials. Notice under this paragraph may be given by
  - a. facsimile, electronic mail or similar transmission or
  - b. posting the notice on the Corporation's internet website.
19. The Corporation must deliver election materials, including candidates' statements (see Paragraph 23 and voting instructions, to each eligible voting member on request.
20. A member may waive receipt of election materials by giving the Corporation notice. A member may not waive receipt of notice of an election.
21. Election materials may be delivered:
  - a. personally
  - b. by mail to the address given by the member, or  
subject to the approval of the election auditor and the directors, by
  - c. facsimile, electronic mail, or similar transmission or
  - d. posting the materials on the Corporation's internet website.
22. A voting member may cast its ballot in the election of directors by delivering its proxy in the form determined by the board of directors to the Corporation by:
  - a. mail
  - b. depositing it in a designated container at one of the Corporation's places of business

- c. facsimile, electronic mail, or similar transmission or
  - d. using an interactive internet website.
23. To become a candidate, a qualified individual must submit, by the close of nominations
- a. a written consent to act as a director
  - b. a written agreement to follow the rules and policies regarding elections and
  - c. a completed nomination package, including:
    - i. name, phone number and email address
    - ii. affiliation, if any, with a voting member
    - iii. biographical statement, as specified in the election policies and
    - iv. election statement, as specified in the election policies.
24. The board will meet within 72 hours of the close of nominations to finalize the list of individuals eligible to vote in the election.

### **Election of Directors**

25. The Corporation must conduct an election of directors each year.
26. Directors shall be elected by the members at an annual meeting of members.
27. The term of office of directors is two years, subject to the following:
- The directors of the Corporation shall be elected and shall retire in rotation. At the first annual meeting of members for the election of directors following the coming into force of this by-law, three directors shall be elected for a term of one year or until the next meeting of members (whichever is the later), and the remainder of the directors to be elected shall be elected for a term of two years or until the second annual meeting of members thereafter (whichever is the later). Thereafter, at each annual meeting of members, directors shall be elected to fill the positions of those directors whose term of office has expired, and each director so elected shall hold office for a term of two years or until the third annual meeting of members thereafter (whichever is the later).
28. In each year, at least three directors shall be elected.
29. If, at the close of nominations, the number of candidates equals the number of vacancies, the candidates shall be declared elected.
30. The term of a director commences on the close of the annual general meeting at which his or her election is announced and ends on the close of the annual general meeting held two years later.

31. The directors may establish policies governing elections and campaigning by candidates, including dates by which
  - a. candidate's statements and certificates must be received
  - b. election materials must be delivered
  - c. votes must be received and
  - d. votes must be counted.
32. The Corporation must provide a copy of any policies governing elections and campaigning to all candidates, and to any member on request.
33. In the event of an interruption of normal postal or internet service, the directors may extend the time for doing anything required in an election.
34. The Corporation, and its employees, agents, contractors, suppliers, directors, officers, election auditor and nominations committee, must not endorse or indicate preference for any candidate.
35. A candidate must not endorse or indicate a preference for any other candidate.

#### **Election Website**

36. During elections, a web forum (the **election website**) will be established to provide members with an opportunity to ask questions and candidates an opportunity to respond.

#### **Nominations**

37. Nominations will be open for a five calendar day period.
38. Any member may nominate as many candidates as they wish Nominations will be done through the TorIX portal and must be done by the DMR.
39. Nominees will be notified at the e-mail address provided by the nominator. Nominees must provide a completed nomination form via e-mail to elections@torix.net no later than 24 hours after the close of nominations.
40. Nominees will be posted to the election website as soon as their package is received and confirmed by the election officer.
41. Changes to information submitted by a nominee will be allowed only at the sole discretion of the election officer.

#### **Appointment and Duties of Elections Officer**

42. The directors must appoint an elections officer.
43. The elections officer should

- a. receive the nominations of candidates and
  - b. ensure that the number of candidates at least equals the expected number of vacant positions.
44. After the close of voting, the election officer must
- a. along with the President and Secretary, tally and verify the votes cast
  - b. arrange to post the results of the election on the website of the Corporation and
  - c. announce the result of the election, including the number of votes received by each candidate, at the annual general meeting.
45. If the election is certified as valid, the election officer must, as soon as practicable, notify each candidate of whether or not the candidate was elected, and notify the directors of the result of the election.

### **Voting**

46. A notification to each DMR will be sent at the opening of voting notifying them of the URL to vote at. A notification will be sent to the members mailing list at the opening of voting advising members that voting has begun.
47. Voting shall be open for 48 hours.
48. The election officer must verify the name each member who votes. The methods by which members may vote must ensure that a member's vote is confidential and verifiable, and that a member can only vote once.

### **Removal, Retirement, etc.**

49. The office of a director shall be automatically vacated:
- a. if at a special general meeting of members, a resolution is passed by two thirds of the members present at the meeting that he be removed from office;
  - b. if a director has resigned his office by delivering a written resignation to the secretary of the Corporation;
  - c. if he is found by a court to be of unsound mind;
  - d. if he becomes bankrupt or suspends payment or compounds with his creditors; or
  - e. on death,

provided that if any vacancy shall occur for any reason in this paragraph contained, the board of directors, by majority vote, may by appointment fill the vacancy with an eligible individual (see Paragraph 13) of the Corporation.

## **Powers of Directors**

50. The directors of the Corporation may administer the affairs of the Corporation in all things and make or cause to be made for the Corporation, in its name, any kind of contract which the Corporation may lawfully enter into and, save as hereinafter provided, generally, may exercise all such other powers and do all such other acts and things as the Corporation is by its charter or otherwise authorized to exercise and do.
51. The directors shall have power to authorize expenditures on behalf of the Corporation from time to time and may delegate by resolution to an officer or officers of the Corporation the right to employ and pay salaries to employees. The directors shall have the power to enter into a trust arrangement with a trust company for the purpose of creating a trust fund in which the capital and interest may be made available for the benefit of promoting the interest of the Corporation in accordance with such terms as the board of directors may prescribe.

The board of directors is authorized, from time to time

- a. to borrow money upon the credit of the Corporation, from any bank, Corporation, firm or person, upon such terms, covenants and conditions at such times, in such sums, to such an extent and in such manner as the board of directors in its discretion may deem expedient;
  - b. to limit or increase the amount to be borrowed;
  - c. to issue or cause to be issued bonds, debentures or other securities of the Corporation and to pledge or sell the same for such sums, upon such terms, covenants and conditions and at such prices as may be deemed expedient by the board of directors; and
  - d. to secure any such bond, debentures or other securities, or any other present or future borrowing or liability of the company, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquired real and personal, movable and immovable, property of the Corporation, and the undertaking and rights of the Corporation.
52. The board of directors may appoint such agents and engage such employees as it shall deem necessary from time to time and such persons shall have such authority and shall perform such duties as shall be prescribed by the board of directors at the time of such appointment.

## **Directors' Meetings**

53. Meetings of the board of directors may be held at any time and place to be determined by the directors provided that 48 hours written notice of such meeting shall be given, other than by mail, to each director. Notice by mail shall be sent at least 14 days prior to the meeting. There shall be at least one meeting per year of the board of directors. No error or omission in giving notice of any meeting of the board of directors or any adjourned meeting of the board of directors of the Corporation shall invalidate such meeting or make void any proceedings taken and any director may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had. Except as otherwise provided and as mandated by the *Act*, every question arising at any meeting of the Board shall be decided by a majority of

votes cast on the question. In the event of an equality of votes, the chair of the meeting has a second casting vote.

- a. The directors of the Corporation may meet by teleconference and by internet enabled conference.
  - b. The directors may meet by such other electronic means that permits each director to communicate adequately with each other, provided that:
    - i. the Board has passed a resolution addressing the mechanics of holding such a meeting and dealing specifically with how security issues should be handled, the procedure for establishing a quorum and recording votes;
    - ii. each director has equal access to the specific means of communication to be used; and
    - iii. each director has consented in advance to using such other specific means of communication proposed for the meeting.
  - c. A director participating in a meeting by teleconference, internet-enabled conference or by other electronic means, is deemed to be present in person at the meeting and, for the purposes of determining quorum in accordance with Paragraph 55.
  - d. When conducting meetings of the Board by teleconference, internet-enabled conference or by other electronic means, each director shall be required to provide to the Secretary of the Corporation a phone number and e-mail address that are personal to such director and shall use best efforts to ensure that such means of communication are kept secure and available only to such director.
54. If a majority of the elected directors consents thereto, votes on any issue may be conducted electronically under the direction of the Secretary of the Corporation in such a manner as to permit the directors to communicate adequately with each other and to which all directors have equal access.
- a. Voting at meetings of the Board conducted by teleconference, internet-enabled conference or by such other electronic means shall be by poll of the participants signifying verbally or electronically, as the case may be, their assent or dissent on the matter before the Board for approval.
  - b. If a majority of the directors objects to the specific telephonic or electronic means of communication to be used for voting on a specific matter or if the telephonic or electronic means of communication is not reasonably secure, as determined by the chair of the meeting, then the proposed telephonic or electronic means of communication shall not be used.
55. A majority of directors in office, from time to time, but no less than two-fifths of the number of directors, shall constitute a quorum for meetings of the board of directors. Any meeting of the board of directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the by-laws of the Corporation.

### **Indemnities to Directors and Others**

56. Every director of the Corporation and their heirs, executors and administrators, and estate and effects, respectively shall from time to time and at all times, be indemnified and saved harmless out of the funds of the Corporation, from and against;
  - a. all costs, charges and expenses which such director sustains or incurs in or about any action, suit or proceedings which is brought, commenced or prosecuted against him, or in respect of any act, deed, matter of thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office or in respect of any such liability;
  - b. all other costs, charges and expenses which he sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own willful neglect or default.

### **Officers**

57. The officers of the Corporation shall be a president, vice-president, secretary and treasurer and any such other officers as the board of directors may by by-law determine. Any two offices may be held by the same person. Officers need not be directors, nor members.
58. The officers of the Corporation shall be appointed by a resolution of the board of directors at the first meeting of the board of directors following an annual meeting of members
59. The officers of the Corporation shall hold office for one year from the date of appointment or election until their successors are elected or appointed in their stead. Officers shall be subject to removal by resolution of the board of directors at any time.

### **Duties of Officers**

60. The president shall be the chief executive officer of the Corporation. He shall preside at all meetings for the Corporation and of the board of directors. He shall have the general and active management of the affairs of the Corporation. He shall see that all orders and resolutions of the board of directors are carried into effect.
61. The vice-president shall, in the absence or disability of the president, perform the duties and exercise the powers of the president and shall perform such other duties as shall from time to time be imposed upon him by the board of directors.
62. The treasurer shall have the custody of the funds and securities of the Corporation and shall keep full and accurate accounts of all assets, liabilities, receipts and disbursements of the Corporation in the books belonging to the Corporation and shall deposit all monies, securities and other valuable effects in the name and to the credit of the Corporation in such chartered bank of trust company, or, in the case of securities, in such registered dealer in securities as may be designated by the board of directors from time to time. He shall disburse the funds of the Corporation as may be directed by proper authority taking proper vouchers for such disbursements, and shall render to the president and directors at the regular meeting of the board of directors, or whenever they may require it, an accounting of all the transactions and a

statement of the financial position, of the Corporation. He shall also perform such other duties as may from time to time be directed by the board of directors.

63. The secretary may be empowered by the board of directors, upon resolution of the board of directors, to carry out his affairs of the Corporation generally under the supervision of the officers thereof and shall attend all meetings and act as clerk thereof and record all votes and minutes of all proceedings in the books to be kept for that purpose. He shall give or cause to be given notice of all meetings of the members and of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. He shall be custodian of the seal of the Corporation, which he shall deliver only when authorized by a resolution of the board of directors to do so and to such person or persons as may be named in the resolution.
64. The duties of all other officers of the Corporation shall be such as the terms of their engagement call for or the board of directors requires of them.

### **Committees**

65. The board of directors may appoint committees whose members will hold their offices at the will of the board of directors. The directors shall determine the duties of such committees and may fix by resolution, any remuneration to be paid.

### **Execution of Documents**

66. Contracts, documents or any instruments in writing requiring the signature of the Corporation, shall be signed by any two officers and all contracts, documents and instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The directors shall have power from time to time by resolution to appoint an officer or officers on behalf of the Corporation to sign specific contracts, documents and instruments in writing. The directors may give the Corporation's power of attorney to any registered dealer in securities for the purposes of the transferring of and dealing with any stocks, bonds, and other securities of the Corporation. The seal of the Corporation when required may be affixed to contracts, documents and instruments in writing signed as aforesaid or by any officer or officers appointed by resolution of the board of directors.

### **Minutes of Board of Directors**

67. Each director shall receive a copy of the minutes and approve such minutes. Upon approval of the minutes by the directors the minutes shall be published to the membership. Such publication shall occur within ten business days of the original board meeting.

### **Financial Year**

68. Unless otherwise ordered by the board of directors, the fiscal year end of the Corporation shall be December 31<sup>st</sup>.

### **Amendment of By-Laws**

69. The by-laws of the Corporation not embodied in the letters patent may be repealed or amended by by-law, or a new by-law in accordance with subsection 129(1) of the *Act* may be enacted by a majority of the directors at a meeting of the board of directors and sanctioned by an affirmative vote of at least two-thirds of the members at a meeting duly called for the purpose of considering the said by-law.

### **Auditors**

70. The members shall at each annual meeting, if required, appoint an auditor to audit the accounts and annual financial statements of the Corporation for report to the members at the next annual meeting. The auditor shall hold office until the next annual meeting provided that the directors may fill any casual vacancy in the office of the auditor. The remuneration of the auditor shall be fixed by the board of directors. The board of directors may waive the requirement for audited statements in any financial year where revenue does not exceed \$100,000 CAD.

### **Books and Records**

71. The directors shall see that all necessary books and records of the Corporation required by the by-laws of the Corporation or by any applicable statute or law are regularly and properly kept.

### **Members Meetings**

72. The members of the Corporation may meet by teleconference and by internet-enabled conference.
73. The members may meet by such other electronic means that permits each member to communicate adequately with each other, provided that
- a. the board has passed a resolution addressing the mechanics of holding such a meeting and dealing specifically with how security issues should be handled, the procedure for establishing a quorum and recording votes and
  - b. each member has reasonable access to the specific means of communication to be used.
74. A member participating in such meeting by teleconference, internet-enabled conference or by such other electronic means, is deemed to be present in person at the meeting, including for the purpose of determining quorum.

### **Rules and Regulations**

75. The board of directors may prescribe such rules and regulations not inconsistent with these by-laws relating to the management and operation of the Corporation as they deem expedient, provided that such rules and regulations shall have force and effect only until the next annual meeting of the members of the Corporation when they shall be confirmed, and failing such confirmation at such annual meeting of members, shall at and from that time cease to have any force and effect.

**Interpretation**

76. . In these by-laws and in all other by-laws of the Corporation hereafter passed unless the context otherwise requires, words importing the singular number or the masculine gender shall include the plural number or the feminine gender, as the case may be, and vice versa, and references to persons shall include firms and Corporations.

**By-law No. 1 Repealed**

77. This by-law repeals and replaces By-law No. 1 of the Corporation.