

Explanatory notes to Resolution [XX] (Virtual General Meetings)

What does this amendment do?

It makes provision so that Annual and Extraordinary General Meetings of the Company can be held virtually, by videoconference. It also raises the quorum (i.e. the minimum number of members that must participate for an AGM/EGM to be valid) from ten to 25.

Why are provisions for virtual general meetings needed?

COVID-19 proved that it is sometimes necessary to hold a General Meeting when it is not possible to meet in person. However, LINX's current articles require that a quorum meets in person. The legal validity of our AGM and Board elections in May 2020 therefore depended on the existence of emergency legislation that is only in force for a temporary period.

We believe it is prudent to make provision so that LINX is never put in a position where an essential General Meeting cannot be held because of restrictions on travel or assembly.

Why raise the quorum?

The quorum requirement is a governance protection for members, which ensures that a minimum number of members must meet for a GM to be valid. While a higher quorum strengthens membership protections, that must be balanced against the risk that it may become too difficult to hold a valid meeting if the quorum is set too high.

With the increase in the size of LINX's membership over the years, the consistently good turnout at member conferences where we hold our GMs, and the experience of a good turnout for our virtual AGM, we believe we can safely strengthen this protection without risking GMs being inquorate.

Is it LINX's intention to transition to purely Virtual General Meetings?

No. We intend to use in person meetings whenever it is safe and reasonable to do so, and only use Virtual General Meetings exceptionally, such as in response to COVID-19.

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Why does this amendment still refer to a minimum number of persons present in person?

Firstly, the usual position would be to hold meetings in person. When this occurs, 25 members be present in the same location for the meeting to be quorate.

Alternatively, the Board may call a Virtual General Meeting. It would be our preference that 25 members on the videoconference should then suffice.

Unfortunately, our legal advice is that the Companies Act has not yet caught up with modern technology, and there is an irreducible minimum of two members who must meet in person, at the same location, for a meeting to be quorate¹. This was temporarily overridden by emergency legislation for the Coronavirus, but that legislation is due to expire on 30th December 2020².

We have therefore constructed a workaround. Under this workaround, if the Board designate a GM as a Virtual General Meeting then so long as two members meet at a prescribed location as required by law, the remainder can join by videoconference. We will still require that the total number of members meeting, by whatever means, reaches or exceeds 25.

How do you expect a Virtual General Meeting to work in practice?

In practice, we anticipate that when a Virtual General Meeting is called we will ask two members to attend a particular location to satisfy the requirement in the Companies Act, and ask that everybody else attend by videoconference.

What if the law is changed?

If the Companies Act is modernised to remove the requirement to meet at a physical location, we will then be able to hold Virtual General Meetings entirely virtually, without further amendment to the Articles.

¹ Our lawyers have told us that the correct interpretation of the Companies Act is not 100% clear in law, but this is the general consensus interpretation held by most corporate governance lawyers.

² See s37 and Schedule 14 of the Corporate Insolvency and Governance Act 2020, as extended by The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020 SI 2020 No. 1031

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Why can only the Board call a Virtual General Meeting?

In practice, all AGMs and EGMs are called by the Board. The Articles contain a power for members to requisition a GM without the Board's consent as a backstop governance protection against a rogue Board, but if that ever occurred, it would most likely be called for the purpose of dismissing and replacing the Board. That member power remains in the Articles and is not being removed.

In any other circumstance, we believe it is desirable for the company to organise the General Meeting so that it can be conducted in good order and with appropriate facilities. That remains the case even in circumstances where a sufficient number of member to convene a meeting wish to discuss business that does not have the Board's support: it is still better for the company to arrange the meeting so that it can be held in an orderly and well-supported fashion.

Accordingly, further extending the power for members to requisition a meeting without Board consent would not protect members' interests better. Instead, the possibility of an inadequately supported meeting would actually weaken this governance protection.

What other protections are being created?

We believe that the opportunity for members to socialise and discuss business between themselves forms an important support for their deliberations prior to voting.

To ensure this is not lost when a GM is held in a virtual format, we are creating a new duty for the Board to ensure that any videoconferencing facility gives members the ability to chat amongst themselves.