

Introduction

LINX started its review of its governance processes by commissioning KPMG to produce a thorough report and proposals in 2014. This was presented to the LINX membership and taken forward by the then Chairman, Steve Wright. The first major development was the recruitment of an independent Chairman, Murray Steele, in 2015.

Murray has since built on the KPMG report and his experience, and has developed with the LINX Board a set of changes which the Board believe will improve the company's governance. These were consulted on at the LINX95 members' conference, and following a positive reception, we have been working on the detail to be presented as a single, all-encompassing, resolution at an Extraordinary General Meeting at LINX96 in February 2017.

A document tracing the history of the review in more detail is available at

<http://www.linx.net/governance-journey>

We found that there were a small number of areas where over the years LINX's practice did not follow the detail specified in the M&A. These are noted in this document. None are significant, and this has been verified by our legal adviser.

This document repeats the overview of changes consulted on at LINX95 and presents the detail of how these will be implemented as changes to LINX's governance document, its Memorandum and Articles of Association (the "M&A"). Each section lists the clauses affected and expands on those clauses that have significant changes.

The Changes

The key changes proposed in the consultation at LINX95 were:

1. To allow for up to three executive directors to join the Board.

2. To protect the special role elected non-executive directors ("NEDs") have in ensuring that LINX remains true to the principle of mutuality and honouring the interests of its members as the core guiding aim by

a. Introducing into the Articles a new reserved power for elected NEDs to prevent decisions that they believe the membership would not wish to sanction – effectively, a veto;

b. Changing the power to dismiss the Chair so that it is exercisable exclusively by the NEDs (executive directors will not get a vote on this)

c. Removing from the Articles an unused power to co-opt external unelected directors;

d. Updating the M&A list of matters reserved for the Board, with greater detail.

3. To clarify the Board quorum requirement (at present the Articles only say that this is for the Board to determine, and there are no further rules on quorum).

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4. To clarify term limits for elected NEDs, and to require Board members who have served for a very long time to sit out for a minimum of three years before standing again.

5. To change the name of LINX's board of directors from "LINX Council" to "LINX Board".

We also asked for member views on whether to change the relative timing of Board elections, hustings for those elections, and the LINX meeting at which both the hustings and the election are currently held.

And, finally, we have conducted a clean-up of the M&A to make it more modern, shorter and applicable to current practice.

The changes to the M&A to implement this are listed in the companion document <http://www.linx.net/manda-changes2017>. This shows the M&A as now and clause by clause the changes together with brief notes on the detail. The rest of this document goes through those changes in the context of the objectives and the main changes for each objective.

The Changes in Detail

I. To allow for up to three executive directors to join the Board.

Articles affected: 32.3; 32.4 (new); 33.4; 33.8 (new); 45A.1, 45A.2, 45B;

The definitions in clause 32 replace the old definition of a staff member of the Board with a new definition for the Chief Executive and a further definition for up to 3 executive directors.

Current M&A	Proposed M&A
32. The Council shall comprise: 32.3. no more than one staff member;	32. The Board shall comprise: 32.3.the Chief Executive; 32.4. no more than three Executive Directors in addition to the Chief Executive;

A new section is introduced to cover the appointment process by the Board.

Proposed M&A (new section)
APPOINTMENT OF EXECUTIVE DIRECTORS TO THE BOARD 45A.1 The Chief Executive shall automatically become a member of the Board of Directors , effective on the moment of appointment as such. 45A.2 The Board shall have the power to appoint to the Board a person who has agreed to become the Chief Executive. This power may be exercised by a simple majority. This power may only be exercised in the event that the office of Chief Executive is vacant, or that a fixed date has been determined when it will become vacant. 45B The Board shall have the power to appoint to the Board an employee of the Company. This power may be exercised by a simple majority. This power may only be exercised in the event that there is a vacancy in the number of Executive Directors specified in article 32.4.

A clause has been added to allow the dismissal of an executive director by the Board. Company Law also allows their dismissal following a members' resolution at an EGM which can be called for that purpose, or the AGM.

Proposed M&A (new article)
33.8 The Board shall have the power by simple majority vote to remove any Executive Director from the Board at any time notwithstanding anything in these Articles or in any agreement between the Company and such director. For the avoidance of doubt, this does not dismiss the Executive Director from his employment by the Company.

2. To protect the special role elected non-executive directors (“NEDs”) have in ensuring that LINX remains true to the principle of mutuality and honouring the interests of its members as the core guiding aim by

a. Introducing into the Articles a new reserved power for elected NEDs to prevent decisions that they believe the membership would not wish to sanction – effectively, a veto; See also the supplement to <http://www.linx.net/governance-journey>

Articles affected: 42A.1; 42A.2 - 42B.2iv; 42b.3

1) The NEDs have a veto of decisions of the Board, so maintaining the membership’s control of LINX.

Proposed M&A (new article)

42A.1 The Representative Members shall have the power to stay a decision of the Board pending ratification by the membership.

2) Clauses to ensure that the Board majority can call a General Meeting and, at it, propose the ratification of a decision that the NEDs have stayed - and that the NEDs cannot prevent the Board doing this.

Proposed M&A (new article)

42A.2 This power may not be exercised in respect of

i) A decision to call a General Meeting; or

ii) A decision to table a resolution for consideration by the Members in General Meeting.

but may be exercised in respect of any other decision of the Board.

3) A clause to require that the power to stay a Board decision be exercised in writing. This provides clarity and certainty: in particular, it ensures a clear distinction is drawn between a NED participating in a veto of a Board decision, and the NED merely expressing disagreement without any intent to exercise a veto.

Proposed M&A (new article)

42A.3 This power shall be exercised by written notice to the Chairman signed by not less than 50% of the Representative Directors voting either in person or by proxy or by written resolution. Such notice may be given electronically, in which case each Representative Director shall convey separately their assent to the giving of the notice, but nonetheless in writing.

4) The NED power to stay (veto) decisions exists to protect the members. The members retain the right to lift the stay.

Proposed M&A (new article)

42A.4 Subject to the next clause, a decision so stayed shall be suspended unless or until it is either ratified or rejected by the Members in General Meeting by simple majority .

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5) The Chair has an emergency power to override a NED veto. This protects the company from being forced into illegal acts by a minority of the Board.

Proposed M&A (new article)

42B.1 The Chairman shall have the power to cause a decision that has been stayed under clause 42A to cease to be stayed and have immediate effect, without the requirement of ratification by the Members.

42B.2 This power shall only be exercised if in the opinion of the Chairman either

i) the Company is likely to act in an illegal or unlawful manner unless he exercises the power; or

ii) the Company is likely to fail to perform some action that it is legally required to perform unless he exercises the power; or

iii) the Board would wish to place its decision before the General Meeting for ratification by the Members, but is prevented from doing so because doing so would entail disclosing information that the Company, or Board members individually, are not lawfully permitted to disclose to the Members; or
iv) in any other circumstances where he considers that not to do so would have a material adverse effect on the Company.

42B.3 This power shall be exercised by written notice from the Chairman to the Board, such notice to contain the Chairman's reasons.

b. Changing the power to dismiss the Chair so that it is exercisable exclusively by the NEDs (executive directors will not get a vote on this)

Articles affected: 33.7

Restricts the current power to remove the Chairman to the elected NEDs and clarifies that this both removes from the office of Chairman and as a director of LINX.

Current M&A

33.7 The Council shall have the power to remove from office the Chairman at any time by simple majority vote notwithstanding any term of appointment ratified pursuant to Article 33.1.

Proposed M&A (new article)

33.7 The Board shall have the power to remove the Chairman from his office as Chairman and as a Director at any time by a vote in favour of not less than 50% of the Elected Members of the Board, notwithstanding any term of appointment ratified pursuant to Article 33.1.

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c. Removing from the Articles an unused power to co-opt external unelected directors;

Articles affected: 32.4 (deleted); 33.5

The definitions in clause 32 are updated.

Current M&A
32. The Council shall comprise: 32.4. no more than one external member;

Proposed M&A
32. The Board shall comprise: << Clause deleted >>

The portion of the clause which covers the expiry of the term of “external” directors is removed, leaving only the portion that covers the re-standing of elected directors at the end of their term.

Current M&A
33.5 the term of office of an external member shall expire on the second anniversary of their most recent appointment, provided, however, that if by that anniversary notice of a General Meeting has been given to the members, and the meeting will be held no more than 30 days after that anniversary, their term of office is extended until that meeting; and at the time of expiration of his or her term of office any member of the Council shall be eligible to be re-elected or re-appointed.

Proposed M&A
33.5 <<section deleted>> at the time of expiration of his or her term of office and subject to Article 33.6, any member of the Board shall be eligible to be re-elected or re-appointed.

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d. Updating the M&A list of matters reserved for the Board, with greater detail.

Articles affected: 49A and 49B replace a host of detail previously in article 49.

Current M&A	Proposed M&A
<p>49. Without prejudice to the general powers conferred by Article 42 and to the other powers and authorities conferred as aforesaid, it is hereby expressly declared that the Council shall be entrusted with the following powers, namely:</p>	<p>49. Without prejudice to the powers and authorities conferred by these articles, it is hereby expressly declared that the Board shall be entrusted with the day to day conduct of managing the affairs of the Company in accordance with the terms of these Articles and in accordance with such direction as the members may from time to time determine including</p> <p>49A From time to time to make and amend such regulations and bye laws as the Board think appropriate Provided that the same do not contravene these Articles or amount to such an addition to or modification of these Articles as could only legally be made by a Special Resolution passed in accordance with the Act;</p> <p>49B From time to time delegate such matters as the Board may consider appropriate to a committee comprising directors or others provided always that such delegation shall in no way release the directors or any of them from their statutory duties to the Company</p>
<p>49.1. To pay the costs, charges and expenses preliminary and incidental to the formation. .</p> <p>49.2. To purchase or otherwise acquire for the Company any property, right or</p> <p>49.3. To raise or borrow money for the purposes of the Company from any person, corporation or other body and . . .</p> <p>9.4. At their discretion to pay for any property or rights acquired by or services</p> <p>49.5. With the approval aforesaid to secure the fulfilment of any contracts or . . .</p> <p>49.6. To appoint and at their discretion, remove or suspend such officers and . . .</p> <p>49.7. To institute, conduct, defend, compound or abandon any legal proceedings by or against . . .</p> <p>49.8. To refer any claims or demands by or against the Company to arbitration and observe and perform the awards.</p> <p>49.9. To make and give receipts, releases and other discharges for money payable to . .</p> <p>49.10. To determine who shall be entitled to sign on the Company's behalf, bills, notes, receipts, acceptances, endorsements cheques, releases, contracts and documents.</p> <p>49.11. From time to time to make all such regulations and bye laws as they think proper with regard to the affairs and concerns of . . .</p>	<p><< all clauses deleted >></p>

3. To clarify the Board quorum requirement (at present the Articles only say that this is for the Board to determine, and there are no further rules on quorum).

Articles affected: 34; 35

There were concerns that there was both a relatively small quorum for Board meetings, and no overriding minimum notice period for the calling of a Board meeting. These were not regarded as appropriate for the expanded size of the Board. The change has a larger quorum with a defined mix of non-executive and executive members and a minimum notice for Board meetings of two days, except in an emergency.

Current M&A	Proposed M&A
34. The Council may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Unless otherwise determined three representative members shall be a quorum. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote.	34. The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Unless otherwise determined four Directors shall be a quorum being at least one Executive Director and three non-executive Directors, which may include the Chairman. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote.
35. A member of the Council may, and on the request of a member of the Council the Secretary shall, at any time, summon a meeting of the Council by notice served upon the members of the Council.	35. A member of the Board may, and on the request of a member of the Board the Secretary shall, at any time, summon a meeting of the Board by notice served upon the members of the Board. Notice shall be a minimum of forty eight hours, but may be a shorter time provided that all members of the Board agree.

4. To clarify term limits for elected NEDs, and to require Board members who have served for a very long time to sit out for a minimum of three years before standing again.

Articles affected: 33.6; 43.1; 44.2

The clause restricting the maximum period a director may serve is made specific to the non-executive directors, including the Chairman. The period is rephrased from years to “terms” where terms are elsewhere defined to be less than 3 years, and the time before a director can restand is changed to a sliding scale of one year gap for each 3-year term served consecutively.

Current M&A	Proposed M&A
<p>33.6 No person shall be entitled to serve as an elected council member for more than 9 consecutive years. Any elected council member who has served for a consecutive period of 9 years shall be deemed to retire on the 9th anniversary of their appointment. Elected council members serving at the 16th November 2009 shall be deemed to have been appointed to their office on the date of their last election prior to such date. Any break of less than 6 months in a council member's period of service shall be ignored in calculating the time period for which a person has served. Any person retiring pursuant to the terms of this article shall be eligible for reappointment to the office of council member following the elapse of at least 11 months from his retirement.</p>	<p>33.6 No person shall be entitled to serve as a Representative Director or Chairman for more than 3 consecutive terms of office. Any Representative Director or Chairman who has served for 3 consecutive terms shall be deemed to retire at the end of their third term. <<transitional clause removed>> Any break of less than 6 months in a Board member's period of service shall be ignored in calculating the time period for which a person has served. Any person retiring pursuant to the provisions of this article shall only be eligible for reappointment to the office of Board member following a period from his retirement of at least 9 months where he has served one term, 21 months where he has served two consecutive terms or 33 months where he has served three consecutive terms.</p>

An equivalent clause has been added to impose a break of one year between serving as an executive director and as a non-executive and vice versa.

Proposed M&A (new article)
<p>33.6A No Executive Director shall be entitled to serve as a non-executive director until one year after their employment by the Company ceased. No non-executive director shall be entitled to be appointed an Executive Director until one year after their term of office has ceased.</p>

5. To change the name of LINX's board of directors from “LINX Council” to “LINX Board”.

Throughout the document, “Council [of Management]” is changed to “Board” and “Member [of Council]” is changed to “Director”. There are too many to list in this summary, but all are noted in the notes column of the accompanying document listing all the detailed changes.

6. We also asked for member views on whether to change the relative timing of Board elections, hustings for those elections, and the LINX meeting at which both the hustings and the election are currently held.

Articles affected: 33.3; 44.1; 45

The voting period for the election of Board members has been changed to start immediately after the AGM at the LINX member conference in May, – the meeting that also hosts the LINX Annual General Meeting. Previously, the voting period finished at the AGM, so many votes were cast prior to the hustings session where the candidates put their points of view in front of, and respond to questions from, the LINX membership. A new definition has been introduced to the M&A, “Voting Period”, which will be set at 2 weeks and will follow the AGM. Any directors retiring at an AGM will remain directors until the end of the voting period which runs from that AGM.

Whilst revising this section, some administrative issues have been addressed. It provides for LINX to have more time between the closing of the nominations and the announcement of the candidates in order to improve the presentation to members of the candidates’ statements. Also, the Board prefers to be certain over the precise voting method and so the exact variant of single transferrable vote to be used is now specified.

Current M&A	Proposed M&A
44. The Council shall hold an election at each Annual General Meeting for those places vacated by retiring representative members. The election shall be by single transferrable vote, using the system currently recommended by the Electoral Reform Society. No person shall be qualified to be elected unless, not fewer than 21 nor more than 42 clear days before the day appointed for the meeting, some member duly qualified to be present and vote at the meeting gives the Company notice in writing that he nominates that person for election, and also that person gives the Company notice in writing that he or she is willing to be appointed.	44.1 The Board shall hold an election following the closing of each Annual General Meeting for those places vacated by Representative Directors retiring by rotation. The election shall be by single transferrable vote, using the system currently recommended by the Electoral Reform Society known as ERS97 . No person shall be qualified to be elected unless, not fewer than 28 nor more than 49 clear days before the day appointed for the meeting, some member duly qualified to be present and vote at the meeting gives the Company notice in writing that he nominates that person for election, and also that person gives the Company notice in writing that he or she is willing to be appointed. Voting will take place during the fourteen days following the Annual General Meeting, or such other period that the Board may from time to time agree ("the Voting Period") .
45. A retiring member shall retain office until the end of that Annual General Meeting, and shall be eligible to stand for re-election.	45. A retiring director shall retain office until the end of the Voting Period following that Annual General Meeting, and shall be eligible to stand for re-election.

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The opportunity has also been taken to revise the process of appointing the successor for an elected director who chooses to retire early. Previously, the situation could occur whereby directors whose periods of service had yet to reach their full term of three years were required to draw lots and one was forced to retire a year early.

Current M&A	Proposed M&A
33.2 the term of office of an elected member shall expire in accordance with Article 43;	33.2 subject to article 44.2 the term of office of an Elected Director shall expire at the end of the Voting Period after the third Annual General Meeting following the date of his or her appointment;

The proposed process eliminates that, and instead, if a director retires early, the Board appoints a director to fill the vacancy until the next AGM, but then extra vacancies are included in the ballot for directors, but with a reduced term to fill the remaining period for the retired director. LINX uses single transferrable vote, which ranks the successful candidates and so the candidates with least votes fill the vacancies with terms less than three years.

Proposed M&A (new term)
44.2 In addition to appointments made pursuant to Article 44.1 to replace Representative Directors retiring by rotation the Board can, at each Annual General Meeting, hold elections to replace Representative Directors who have ceased to be Members of the Board for any reason other than retirement by rotation using the same mechanic as set out in Article 44.1. For the avoidance of doubt any such appointment made under this Article shall not be for three years but for the balance of the three year term outstanding in respect of the Board member whose position is being replaced. The places shall be allocated in order of decreasing term.

7. Plus a clean-up of the M&A to make it more modern, shorter and applicable to current practice.

Memorandum clauses affected: 3.1.1, 3.1.4, 4 (last section)

Articles affected: 1 (tidying up definitions); 6.1.1, 8, 13, 23.2, 29, 35; 40; 57.3

Tidy up the company's objects clause in the Memorandum to merge the two company objects and so remove the unfortunate implication that 3.1.2 is an entirely separate head of the mission.

Current Memorandum 3.1.1	Proposed Memorandum
3.1.1 To provide world-leading internet exchange points for the mutual benefit of members, 3.1.2 To provide increasing performance and value for members	3.1.1 To provide world-leading internet exchange points providing increasing performance and value for the mutual benefit of members

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Remove clauses from the last section of 3.1.4 “AND in furtherance of the said objects . . . “ through to and including the “PROVIDED THAT” section of clause 3.22 as this level of detail is no longer appropriate to a 2017 Memorandum. A similar deletion of the text from clause 4:

Current Memorandum 3.1.1	Proposed Memorandum
PROVIDED that nothing herein shall prevent the payment in good faith of reasonable and proper remuneration to any officer or servant of the Company or to any member of the Company in return for any services actually rendered to the Company, nor prevent the payment of interest at a rate per annum not exceeding 2% less than the base lending rate prescribed by a clearing bank selected by the Council on money lent or reasonable and proper rent for premises demised or let by any member of the Company.	PROVIDED that nothing herein shall prevent the payment in good faith of reasonable and proper remuneration to any officer or servant of the Company or to any member of the Company in return for any services actually rendered to the Company. << rest of clause deleted>>

Update the detail to match current practice of the process by which members are accepted into membership by the Board. This had evolved over years to be handled administratively by the LINX executive overseen by the Board.

Current M&A	Proposed M&A
6.1.1. Such persons must be proposed for election by a member of the Council and fourteen days' notice shall be given to the members of the Council for the meeting at which it is intended to propose such persons for election, stating the object of the meeting, the name and address of the person to be proposed and the name of the member of the Council proposing such person.	6.1.1 Such persons shall be proposed for election by the Board.

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Update the detail to match current practice of the process by which members who are in breach of the Articles or the LINX MoU are removed from membership. Our advice is that as the actual practice was fully visible to members and noted in our formal notices, and no members so removed from membership made any representation, that no action is needed in respect of members removed. However, it is good practice to take this opportunity to revise the relevant article.

Current M&A	Proposed M&A
8. If any member shall fail in the observance of these Articles or of any regulations of the Council made under any powers vested in them or for other sufficient reason the Council may convene an Extraordinary General Meeting of the Company for the purpose of considering an extraordinary resolution for the expulsion of such member and on such extraordinary resolution being passed the name of such member shall be removed from the Register of members, and he shall thereupon cease to be a member of the Company and a LINX member for the purposes of the Memorandum of Understanding.	8. If any member shall fail in the observance of these Articles or of any regulations of the Board made under any powers vested in them or for other sufficient reason the Board may suspend such member from membership and at a future General Meeting of the Company notify the members of any suspended members and in the absence of any resolution to the contrary being passed the name of such member shall be removed from the Register of members, and he shall thereupon cease to be a member of the Company and a LINX member for the purposes of the Memorandum of Understanding.

Update the detail to match current practice of the process that allocates a vote between members which are under common control. This is an area where LINX had not followed the detail of the current M&A. Our advice is that as the actual practice was by consent of the members affected, who were under common control, that this does not affect any resolutions. However, it is good practice to take this opportunity to revise the relevant article.

We have also updated the wording to refer to the current Act of Parliament.

Current M&A	Proposed M&A
23.2 Where, in the reasonable opinion of the Council, two or more members are deemed to be "connected persons", or controlled by "connected persons" (as defined in Section 839 of the Income and Corporation Taxes Act 1988 or in any legislation amending or replacing it), the member that became a member of the Company first shall, to the exclusion of the member with whom they have become connected, have the right to vote as a member of the Company. Failure of any Member to provide such information as the Council may reasonably require shall entitle the Council to withdraw voting rights in respect of all such connected persons.	23.2 Where, in the reasonable opinion of the Board , two or more members are deemed to be "connected persons", or controlled by "connected persons" (as defined in Sections 993 and 994 of the Income Tax Act 2007 or in any legislation amending or replacing it), the connected members shall agree which shall have the right to vote and if they disagree then the member that became a member of the Company first shall, to the exclusion of the member with whom they have become connected, have the right to vote as a member of the Company. Failure of any Member to provide such information as the Board may reasonably require shall entitle the Board to withdraw voting rights in respect of all such connected persons.

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Remove the unnecessary detail relating to the appointment of proxies. The overriding requirements are governed by UK company law, so this level of detail is not needed.

Current M&A	Proposed M&A
<p>29. An instrument appointing a proxy shall be in the following form, or as near thereto as circumstances will admit:-</p> <p>I [] of [] a member of London Internet Exchange Limited ("the Company") and entitled to one vote, hereby appoint the chairman [] of [] another member of the Company, and failing him [] of [] another member of the Company [[Delete one or other option as appropriate]] to vote for me and on my behalf of at the General Meeting of the Company to be held on the [] day of [] 20[] and at any adjournment thereof.</p> <p>As Witness my hand this [] day of [] 20[] and such a form of proxy may also contain arrangements for requiring the appointed person to vote in a particular way on certain matters.</p>	<p>29 An instrument appointing a proxy shall be in the form specified from time to time by the Board.</p>

Removal of an article restricting payments to companies of which a director is a member. This dates back to LINX's formative period and is not relevant to a company of LINX's current size where day to day executive matters are not handled by the non-executive directors.

Current M&A	Proposed M&A
<p>57.3. the payment is a share of, or profit resulting from, a payment to a company of which the member of the Council of Management is a member, and in which such member does not hold more than one one-hundredth part of the capital or voting rights; or</p>	<p><<delete entire article>></p>