

Changes to Articles and MoU 2022

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Document change history	
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Introduction

This is a membership consultation on changes to the Articles of Association of London Internet Exchange Limited, and also on changes to the Memorandum of Understanding.

The changes concern technical matters of corporate governance: the appointment of the Chair of the General Meeting, the adjournment of the General Meeting, and the operation of provisions to terminate the membership of suspended members.

Background

At LINX 114 in November 2021 we noticed two issues:

- The Articles do not specify who should be the Chair of the meeting.
- Once a calling notice has gone out specifying the suspended members who are to be terminated, it is not easy to withdraw

The MoU states that the calling notice for a General Meeting will contain a list of members who are suspended, and that unless there was a vote to the contrary, they will have their membership automatically terminated at the conclusion of the General Meeting.

At LINX 114 we had a need to remove a member from the list of suspended members to be terminated. Unfortunately, it was ambiguous as to whether the Board had that power, as the calling notice to the General Meeting had already gone out.

Because the Board's authority was unclear, the Chair formally proposed a "vote" of the membership to retain that member. In the event, the motion was agreed to unanimously, avoiding the need to count votes. This was fortunate, because the online voting system had not been prepared for such a vote. To avoid problems in the future, we need a more flexible system that will allow us to remove members from the list of those presented for termination.

The Articles also describe in some detail how the Chair of the Board is appointed, but make no mention of the Chair of the General Meeting (this is not the same function). This is especially concern as the Chair may hold numerous proxy votes.

Legal advice received

We sought legal advice on these matters and our lawyer advised us:

- The Articles do not contain a mechanism that identifies how the Chair of the General Meeting is selected, and this should be corrected.
- The Articles do not contain provision for the adjournment of the General Meeting; again, it would be preferable to make such provision in case it was needed.
- We can give more flexibility to the Board to withdraw nominations for termination without changing the Articles, by changing the MoU instead, and aligning the calling notice for General Meetings with those provisions in the MoU.



Summary of proposals

1. Amend the Articles to state that:
 - The Chair of the Board shall be the Chair of the General Meeting, as long as a Chair exists, is present, and is willing to act.
 - If one of those conditions is not met, the “directors present” shall appoint the Chair of the General Meeting.
 - If no directors are present, the meeting must select a Chair as the first order of business (in practice, this should never occur).
2. Amend the Articles to provide to provide for adjournment of the meeting:
 - By the Chair at his discretion, with the consent of the meeting;
 - Mandatorily, if the meeting so directs the Chair; and
 - By the Chair, if the Chair considers it necessary to protect the safety of any person present or to enable business to be conducted in an ordinary fashion
3. Amend the MoU clause 5 (termination), to state more clearly that termination of suspended members (including automatic termination without a vote) will only apply to those members who are actually suspended at the time of the General Meeting.

Also, replace the subsection of clause 5 that gives the Board the power to end a suspension with a more flexible power that would allow the Board to lift a suspension in anticipation of resolution of a breach, and reimpose it later if necessary. This will avoid needing to terminate a member prematurely, merely because General Meeting happens to occur while a suspended member is seeking to resolve their breach.



Text of new and amended Articles

After clause 13 add new clause 13A:

13A. Chairing General Meetings

13A.1 If the directors have appointed a chairman, the chairman shall chair General Meetings if present and willing to do so.

13A.2 If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start (i) the directors present, or (ii) (if no directors are present), the meeting, must appoint a director or member to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

13A.3 The person chairing a meeting in accordance with this article is referred to as "the chairman of the meeting".

After clause 14 add new clause 14A:

14A. Adjournment


14A.1 If the persons attending a General Meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

14A.2 The chairman of the meeting may adjourn a General Meeting at which a quorum is present if (i) the meeting consents to an adjournment, or (ii) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

14A.3 The chairman of the meeting must adjourn a General Meeting if directed to do so by the meeting.

14A.4 When adjourning a General Meeting, the chairman of the meeting must (i) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and (ii) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

14A.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given) (i) to the same persons to whom notice of the company's General Meetings is required to be given, and (ii) containing the same information which such notice is required to contain.



14A.6 No business may be transacted at an adjourned General Meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

In clause 12B.10, for each occurrence of the word “Chair” substitute “chairman”

Text of new and amended clauses of the MoU

At the end of clause 5.1.2.6, add new subclause d)

d) The actions set out in clauses 5.1.2.6 a) to c) shall only be taken if your suspension is in effect at the time of the General Meeting.

After clause 5.1, and before clause 5.2, add new clauses 5.1A and 5.1B:

- 5.1A LINX shall have the right to lift a suspension imposed under clause 5.1.2 if you have remedied your breach, or if in the Council's absolute discretion it anticipates you will remedy your breach of this MoU in a timely fashion. If suspension is lifted LINX will reconnect your LINX services and you will regain any rights and privileges lost due to suspension.
- 5.1B LINX may reinstate a suspension that it has lifted under clause 5.1A at any time, if you, following a suspension being lifted, do not go on to fully remedy your breach of this MoU. If your suspension is reinstated it shall have the same effect as if made for the first time.

Replace existing clause 5.2 with the following:

- 5.2 You may appeal against the any decision of the Council about the suspension of this MoU with you. To do this, you must follow the Appeal Procedure.

Consultation process

The member consultation on these changes begins at LINX 115. To be considered by the Board, member comments should be sent to consultations@linx.net by 30th April 2022.

The Board intends to bring propose the changes, subject to any amendments made as following the member consultation, for approval by a vote at the company AGM scheduled for 26 or 27th May 2022.