



Uganda Internet eXchange Point

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<http://www.uixp.co.ug>

## New Memorandum & Articles of Association (MEMARTs)

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### Background & Introduction

The Uganda Internet eXchange Point (UIXP) was conceived in 2001 as a private company with a neutral not-for-profit association governance model whereby connected networks were meant to collectively oversee the company's management through a democratic process.

The selection of a neutral not-for-profit model ultimately proved to be a wise choice, and the UIXP achieved significant success despite facing an array of challenges throughout its history. However, the democratic process quickly broke down due, in part, to significant flaws in the legal documents that define its structure; the Memorandum and Articles of Association (MEMARTs).

The original MEMARTs, which are still in effect today:

- Are enormous in length, disorganized, and full of cryptic legal jargon. This makes them difficult to understand which, in turn, makes them difficult to implement.
- Do not cater for membership based on a service contract. Instead, they require updating the MEMARTs filed at Companies House with a fresh set of signatures from all members every time a network joins or leaves the exchange; a costly, time consuming, and labour intensive process.
- Give excessive powers to Directors sufficient for them to expropriate control of the association from its members.

In an attempt to resolve these issues, we drafted new MEMARTs and proposed them to the community in 2015. These documents aimed to:

- Ensure that Participant members (i.e. networks) collectively remain the highest authority in the governance process.
- Resolve issues related to term limits, governance capture, and conflicts of interest.

- Allow networks to become legal Participant members of the association by signing and adhering to a service contract. This was achieved by introducing an elected Trustee membership class that can sign and steward the MEMARTs on behalf of the Participant members.
- Prevent company dysfunction in cases where the number of Participant members drops below a workable number (e.g. 3) by allowing Trustees to vote in company meetings.
- Eliminate numerous inappropriate and/or redundant clauses, close loopholes, and use plain language wherever possible. The total length has been reduced from 30 pages to 10 if given equivalent formatting.
- Allow for electronic correspondence, participation, and voting in company meetings.

While we did not receive any feedback, and lacked funds for implementation, we continued working to revise these documents with the hope that we might eventually find a way forward.

Attached is the result of those efforts; a new draft of the proposed UIXP MEMARTs which we submit for your comment and review.

Regards,

Kyle Spencer

# Memorandum (DRAFT 2018-12)

*Uganda Internet Exchange Point Limited*

## **NAME AND OBJECTIVES**

1. The name of the Company is "UGANDA INTERNET EXCHANGE POINT LIMITED"
2. The registered office of the Company shall be situate in the Republic of Uganda.
3. The objects for which the Company is established are:
  - a. To provide a neutral, efficient, and reliable means for networks to interconnect and exchange data.
  - b. To facilitate and encourage network interconnection and data exchange.
  - c. To raise funds in order to ensure the Company is sustainable.
  - d. To establish agreements or collaborative relationships with other entities in order to achieve the objectives of the Company.
  - e. To recruit, employ, or otherwise engage qualified personnel who are necessary and useful for the purposes of conducting Company business.
  - f. To organize or participate in conferences, meetings, workshops, seminars, training sessions, and exhibitions in order to achieve the objectives of the Company.
  - g. To subscribe to, participate in, or otherwise assist benevolent or charitable institutions, associations, societies, clubs, funds, or other entities of a public character in order to achieve the objectives of the Company.
  - h. To apply for, promote, and obtain any decree, act of parliament, regulation, ordinance, provisional order, letter, patent, or licence which enables the Company to carry out its objects, or for other purposes which may seem expedient, and to oppose proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests;
  - i. To do all such other things as are incidental or conducive to the attainment of the above objects;

We, the persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this memorandum of association.

**<LIST OF MEMBERS>**

# Articles of Association (DRAFT 2018-12)

## *Uganda Internet Exchange Point Limited*

### **1. DEFINITIONS AND INTERPRETATIONS**

- a. Company: The Uganda Internet eXchange Point Limited
- b. Board: The directors of the Company
- c. Board Meeting: A meeting of the directors of the Company
- d. Annual General Meeting (AGM): An annual meeting of the members of the Company required to be held under the Companies Act.
- e. General Meeting: Either an Annual General Meeting (AGM) or an Extraordinary General Meeting (EGM).
- f. Simple Majority: A majority in which the highest number of votes cast for any one candidate, issue, or item exceeds the second-highest number.
- g. Absolute Majority: A number of votes totalling over 50 percent of eligible voters.
- h. Special Resolution: A resolution regarding exceptionally important decisions, such as altering the terms of the Articles of Association or the Memorandum of Association.
- i. Ordinary Resolution: A resolution regarding decisions which do not fit the criteria of a Special Resolution.
- j. Company Secretary: As defined by Companies Act.
- k. Companies Act: <http://www.ulii.org/content/companies-act-2012>

### **2. MEMBERSHIP**

- a. Company membership shall be categorized into two classes: Trustee Members and Participant Members.
- b. Trustee Members:
  - i. Shall be elected by an Absolute Majority at an Annual General Meeting.
  - ii. Shall have their names registered in the Company Memorandum and Articles of Association.
  - iii. Shall serve for a period of 5 years and be eligible for re-election.
  - iv. Shall be a minimum of five (5) and a maximum of seven (7) in number.
  - v. When the number of Trustee Members falls below the minimum requirement, the Board shall within sixty (60) days appoint temporary replacements in sufficient number to meet the minimum requirement. Trustee Members appointed through this process must meet the Trustee Member eligibility criteria set forth within this document and shall serve only until the next General Meeting.
  - vi. Trustee Members shall meet the following eligibility requirements:

1. Shall be natural persons.
2. Shall have a demonstrated long-term interest in the well-being of the Company and Internet ecosystem.
3. Shall comply with any reasonable criteria set forth by the Election Committee.

c. Participant Members

- i. Shall become members upon signing a contract with the Company.
- ii. Shall not have their names registered in the Company Memorandum and Articles of Association.
- iii. Shall meet the following eligibility requirements:
  1. Shall be body corporates.
  2. Shall comply with any reasonable eligibility requirements as determined by the Board from time to time.

d. Members shall be entitled:

1. To receive notice of all General Meetings and to attend all such meetings.
2. To nominate a representative to attend and vote during meetings.
3. By Simple Majority vote, on the day of each Annual General Meeting, to elect the directors and Trustees of the Company;
4. At each General Meeting, to receive, discuss, and comment on the auditor's report, the annual report, and other major transactions as well as approve financial statements of the Company.
5. At each General Meeting, to discuss and comment on the general policies of the Company on such issues and for such a time as shall be reasonably allowed by the chairperson of the General Meeting
6. Direct the Board, by way of a notice signed by not less than twenty (20) percent of the members, to call an Extraordinary General Meeting to vote on one or more resolutions.
7. By vote for the dissolution of the Board.
8. Resolve, by Special Resolution, to put the Company into liquidation.

e. Membership shall terminate if:

- i. Notice to this effect is given to the Company by the member.
- ii. The Board, acting reasonably and in good faith, determines that the member has failed or refused to comply with the provisions of this Constitution, Company policy, or any applicable laws.

- iii. In the case of a member who is a natural person, on the date that the member dies, becomes of unsound mind, or a person whose estate is liable to be dealt with in any way under the laws relating to mental health.
- iv. In the case of a member which is a body corporate, on the date that: a liquidator is appointed in connection with the winding-up of the member; an order is made by a court for the winding-up or de-registration of the member; or the member is otherwise dissolved, wound up, terminated, or ceases to exist.

### 3. DIRECTORS

#### a. General Information

- i. The election of directors shall be carried out in Annual General Meetings in accordance with an election process drafted by an Election Committee and approved by the Board.
- ii. Each director shall hold office for a term of two (2) years.
- iii. Each director's term shall expire on the date of the Annual General Meeting held at the end of the second year of the director's term.
- iv. Directors shall not serve more than two (2) consecutive terms.
- v. Directors shall be a minimum of five (5) and a maximum of seven (7) in number.
- vi. In the event that the number of directors falls below the minimum required, the Board shall within sixty (60) days appoint temporary replacements. Directors appointed through this process must meet the eligibility criteria set forth within this document and shall serve until the end of the term of the director whom they replaced.
- vii. At the first Annual General Meeting under this Memorandum of Association, the terms of two serving directors shall end.

#### b. Directors shall meet the following eligibility requirements:

- i. Shall be natural persons.
- ii. Shall have a demonstrated interest in the well-being of the Company and Internet ecosystem.
- iii. Shall comply with any reasonable criteria set forth by the Election Committee.

#### c. Rights & Powers

- i. The business of the Company shall be managed by the Board, who may exercise all such powers of the Company as are not, by Companies Act or by these regulations, required to be exercised by the Company at a General Meeting.

- ii. The Board may appoint any company, firm, person, or body of persons to be the attorney or attorneys of the Company for such purposes and with such powers and for such period as the Board may think fit.
  - iii. The Company may exercise the powers conferred by Companies Act with regard to having an official seal for use, and such powers shall be vested in the Board.
  - iv. The Board shall not borrow money or mortgage the Company's undertaking, property, uncalled capital, or any part thereof, or issue debentures and other securities for any debt, liability, or obligation of the Company without the previous sanction of the Company by Special Resolution in a General Meeting.
  - v. The Board may exercise the powers conferred upon the Company by Companies Act with regard to the keeping of a branch register.
  - vi. A director who is in any way, directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest in accordance with Companies Act.
  - vii. A director shall not vote on any contract or arrangement in which he is personally interested. These prohibitions shall not apply to:
    - 1. Any arrangement for giving any director any security or indemnity in respect of money lent by him, or obligations undertaken by him, for the benefit of the Company.
    - 2. Any arrangement for the giving by the Company of any security to a third party in respect of a debt or obligation of the Company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security.
    - 3. These prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the Company in a General Meeting.
  - viii. A director may hold any other office or place of profit under the Company, other than the office of Executive Director or auditor, for such period and on such terms as the Board may determine.
- d. Remuneration
- i. The remuneration of directors shall from time to time be determined by Ordinary Resolution in a General Meeting.
- e. Termination
- i. The office of a director shall be vacated if the director:
    - 1. Ceases to be a director by virtue of Companies Act.
    - 2. Resigns his office by notice in writing to the Company.

3. Is absent from three consecutive Board Meetings without providing prior written notice and showing reasonable cause.

#### 4. MEETINGS

- a. Notice of General Meetings
  - i. Written notice of the time, date, and place of a General Meeting shall be sent to every member, director, secretary, and auditor not less than 21 days before the General Meeting.
  - ii. The notice may be delivered by post, fax, electronic mail, or such other method as the Board shall reasonably determine from time to time; and shall state:
    1. The nature of the business to be transacted in sufficient detail to enable a member to form a reasoned judgment in relation to it;
    2. The names of any persons who have been nominated and are eligible to be elected as directors or Trustee Members;
    3. The names of any directors and Trustees who will retire;
    4. The text of any Special Resolution to be submitted.
  - iii. Any irregularity in a notice of a General Meeting shall be waived where all the members entitled to attend and vote at the General Meeting attend the said meeting without protest as to the irregularity, or where all members agree to the waiver.
  - iv. Any accidental omission to give notice of a General Meeting to, or the failure to receive notice of a General Meeting by a member or any other person entitled to receive notice shall not invalidate the proceedings at that meeting.
  - v. When a General Meeting is adjourned for 30 days or more, notice of the adjourned General Meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or the business to be transacted at the adjourned General Meeting to members.
- b. The chairman of the Board shall chair the General Meeting. If he shall not be present within thirty minutes after the time appointed for holding the meeting, or is unwilling or unable to chair the meeting, the directors present shall elect one of their number to be chairman of the meeting.
- c. The chairman may adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- d. Proxies
  - i. Any body corporate, which is a member of the Company, may authorise such person as it thinks fit to act as its proxy at any meeting of the Company, and the person so authorised shall be entitled to exercise the



same powers as that body corporate could exercise itself as a member of the Company.

- ii. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or if the appointer is a body corporate, either under seal, or under the hand of an officer or attorney duly authorised.
- iii. A proxy need not be a member of the Company.
- iv. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time of the meeting or adjourned meeting, at which the person named in the instrument proposes to vote.
- v. An instrument appointing a proxy shall be in the following form or a form as near as circumstances admit: "I/We, of [MEMBER COMPANY], being a member of the Uganda Internet Exchange Point Limited, hereby appoint [PERSON 1], or failing him, [PERSON 2], as my/our proxy to vote for me/us in the meeting of the company to be held on [MEETING DATE], and at any adjournment thereof. Signed [AUTHORIZED MEMBER REPRESENTATIVE NAME AND TITLE] this day of [DATE OF SIGNING]"
- vi. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal, or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity, revocation, or transfer shall have been received by the Company in writing before the commencement of the meeting or adjourned meeting at which the proxy is used.

e. Quorum

- i. No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum;
- ii. The quorum for a General Meeting shall be composed of one third ( $\frac{1}{3}$ ) of all members, or 50 members, whichever is less.
- iii. Where a quorum is not present within thirty (30) minutes after the time appointed for the General Meeting, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the chairman may determine.

f. Resolutions

- i. Ordinary Resolutions shall be approved by a simple majority vote among those members entitled to vote.

- ii. Special Resolutions shall be approved by a majority of two thirds ( $\frac{2}{3}$ ) of Participant members entitled to vote and two thirds ( $\frac{2}{3}$ ) of Trustee Members entitled to vote.
- g. Voting Procedure
  - i. Every member of the Company shall be entitled to cast one vote so long as their membership is in good standing according to the criteria set forth by the Company.
  - ii. Where a General Meeting is held, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods as determined by the chairman of the meeting: voting by voice; voting by show of hands; voting by paper ballot; voting by electronic system.
  - iii. A declaration by the chairman of the meeting that a resolution is carried by the requisite majority shall be conclusive evidence of that fact unless a poll is demanded.
  - iv. At a General Meeting, a poll may be demanded by any member, director, or chairman of the meeting for any resolution.
  - v. In the case of an equality of votes, the chairman of the meeting shall be entitled to cast a second vote.
- h. Minutes of Meetings
  - i. The Board shall ensure that minutes are kept for all proceedings at all General Meetings. Such minutes shall include but not be limited to the names of the members and directors present at each meeting; all appointments of officers made by the Board; and of all resolutions and proceedings.
  - ii. Minutes that have been approved by an Ordinary Resolution in a Company meeting shall be evidence of the proceedings of previous meetings.
  - iii. Minutes shall be kept in such accessible electronic formats as the Board may determine.
  - iv. Minutes shall be made available to the members within two weeks of the meeting date.

## **5. ELECTION COMMITTEE**

- a. There shall be an Election Committee, which shall consist of a chairman and two other members as appointed by the Board.
- b. The Election Committee shall report to the Board and serve the function of:
  - i. Calling for candidates and ensuring that a satisfactory number of individuals stand as candidates for election;
  - ii. Prescribing and publishing the election process and timelines;

- iii. Prescribing reasonable and consistent criteria for candidate eligibility in addition to those outlined in this document;
- iv. Vetting applicants as necessary in order to produce a final list of eligible candidates;
- v. Having general responsibility for conducting the polls on election day.

## **6. EXECUTIVE DIRECTOR**

- a. The Board may, from time to time, appoint a Executive Director for such period and on such terms as it thinks fit and, subject to the terms of any agreement entered into in any particular case, may also revoke such appointment.
- b. The Executive Director shall receive such remuneration as the Board may determine.
- c. The Board may confer upon the Executive Director any of its powers upon such terms and conditions, and with such restrictions as it may think fit, and may from time to time revoke, withdraw, or alter such powers.

## **7. COMPANY SECRETARY**

- a. The Company secretary shall be appointed by the Board on such terms, at such remuneration, and upon such conditions as it may think fit; and any Company secretary so appointed may be removed by the Board.

## **8. THE COMPANY SEAL**

- a. The Board shall provide for the safe custody of the seal, which shall be used by the authority of the members, or of a committee of the directors authorised by the members, and every instrument to which the seal is affixed shall be signed by the Company secretary and a director.

## **9. ACCOUNTS**

- a. The Board shall cause proper books of accounts to be kept with respect to:
  - i. All sums of money received and expended by the Company, and the matters in respect of which the receipt and expenditure takes place.
  - ii. The assets and liabilities of the Company.
- b. Proper books shall not be deemed to be kept if there are not kept such books of accounts as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.
- c. The books of accounts shall always be open to the inspection of the directors and Company members.

## **10. AUDIT**

- a. Auditors shall be appointed and their duties regulated in accordance with the Companies Act.

## **11. WINDING UP**

- a. If the Company shall be wound up the liquidator may, with the sanction of a Special Resolution of the Company and any other sanction required by Companies Act, divide amongst the members in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.
- b. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trust for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.
- c. Every member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before he ceases to be a member, and the costs and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required.

## **1. INDEMNITY**

- a. Every director, agent, auditor, secretary, and officer of the Company shall be indemnified out of the assets of the Company against all liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour, or in which he is acquitted, or in connection with any application under Companies Act in which relief is granted to him by the Court.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of these Articles of Association.

**<LIST OF TRUSTEE MEMBERS>**