

Corporations Act
Company Limited by Guarantee

CONSTITUTION
OF
MERCY SHIPS AUSTRALIA LIMITED

NAME

1. The name of the Company is Mercy Ships Australia Limited.

OBJECTS

2. The object of the Company is to provide relief of sickness and the promotion of health of the poor and disadvantaged in those countries the Minister for Foreign Affairs has declared to be developing countries including Benin, Guinea, Liberia, Sierra Leone, Togo, Belize, Haiti, Honduras, Nicaragua, Bangladesh, Laos and Vietnam by raising funds from the public in Australia and applying those funds towards:
 - a. the purchase of medical, optical and dental supplies to be dispensed from:
 - i. a ship(s) which acts as a floating hospital; and
 - ii. a floating hospital and/or its associated land based project(s);
 - b. the cost of forwarding to a ship(s) and/or its associated land based project(s) medical, optical and dental goods in kind;
 - c. the provision of medical staff to work on the ship(s) and in the developing countries;
 - d. the acquisition of ship(s);
 - e. the provision of staff to operate the ship(s);
 - f. the provision of volunteers to educate and work with indigenous people in developing countries on matters relating to health and sanitation; and
 - g. the provision of an office(s) in Australia to co-ordinate fund raising programs and the activities of the ship(s).

In furtherance of these purposes, the Company will work in partnership with indigenous organisations which are effective in conducting their activities in countries declared by the Minister for Foreign Affairs to be developing countries.

LIABILITY

3. The liability of the members is limited. Every member of the Company undertakes to contribute such amount as may be required not exceeding \$10.00 to the assets of the Company if the Company is wound up during the time he or she is a member or within one year afterwards for:
 - a. payment of the debts and liabilities of the Company contracted before the time he or she ceased to be member;
 - b. the costs, charges and expenses of winding up the Company; and
 - c. the adjustment of the rights of the members among themselves.

INCOME AND PROPERTY

4. The Company's income and property is to be applied solely towards the promotion of the Company's objects as set out in this Constitution. No part of the Company's income and property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the Company. However, this clause does not prevent:
 - a. the payment in good faith of remuneration to any employee of the Company or to any member or other person in return for any services actually rendered to the Company;
 - b. the payment to a director of out-of-pocket expenses incurred in carrying out the duties of a director where the payments do not exceed an amount previously approved by the Board;
 - c. the payment to a member of the Board for any service rendered to the Company in a professional or technical capacity where:
 - i. the provision of that service has the prior approval of the Board; and
 - ii. the amount payable is approved by a resolution of the Board and is on reasonable commercial terms;
 - d. the payment to a director as an employee of the Company where the terms of employment have been approved by a resolution of the Board;
 - e. the payment to members of interest on any money borrowed from such members for the purpose of the Company at a rate not exceeding the lowest rate paid for the time being by the Company's principal bank in New South Wales in respect of term deposits of \$50,000.00 for six months;
 - f. the payment to members of reasonable market rent for premises leased by any member to the Company.

WINDING UP

5. a. If, on the earlier of:
 - i. the Company's winding up or dissolution, and

- ii. the revocation of the Company's deductible gift recipient endorsement,

there remains after satisfaction of all its liabilities any property, such property must not be distributed among the members but must be given to another gift deductible fund, authority or institution, provided such gift deductible fund, authority or institution:

- iii. has objects similar to the Company's objects;
- iv. prohibits the distribution of income and property among its or their members to an extent at least as great as is imposed on the Company under clause 5; and
- v. has been endorsed by the Australian Commissioner of Taxation as an Income Tax Exempt Charity.

- b. Such gift deductible fund, authority or institution are to be determined by the members of the Company at or before the time of dissolution or revocation of the Company's deductible gift recipient endorsement, which ever happens first and, in default, by the Chief Judge in Equity of the Supreme Court of New South Wales or such other Judge of that Court or any other Court as may have or acquire jurisdiction in the matter.
- c. If effect cannot be given to this provision, then such property must be given to some charitable object which prohibits the payment of any income or property to its members.

CHANGES TO CONSTITUTION

- 6. No addition, alteration or omission may be made to or from the previous clauses of this Constitution unless the same have been previously submitted to and approved by the Australian Securities & Investments Commission and then only by special resolution of the members of the Company.

DEFINITIONS

- 7. In this Constitution, the following words and expressions have the meanings indicated unless the context requires otherwise.

"Auditor" means the Company's auditor.

"Board" means the Company's Board of Directors assembled at a meeting of Directors in accordance with this Constitution.

"Company" means Mercy Ships Australia Limited.

"Constitution" means the Constitution of the Company as amended from time to time.

"Members" means the people shown as members on the Company's register of members.

"Mission Statement" means the following:

Mercy Ships, a global charity, has operated a growing fleet of hospital ships in developing nations since 1978. Following the example of Jesus, Mercy Ships brings hope and healing to the poor, mobilizing people and resources worldwide.

"Notice" includes all written communications to members.

"Office" means the Company's registered office.

"Register" means the Company's register of members.

"Registered address" means the last known address of a member as noted in the Register.

"Secretary" means any person appointed by the Board to perform the duties of a secretary of the Company and includes an Honorary Secretary.

"Statement of Faith" means the following:

We believe that the Bible is God's inspired and authoritative word, revealing that Jesus Christ is God's Son, that man is created in God's image, that He created us to have eternal life through Jesus Christ, that although all men have sinned and come short of God's glory, God has made salvation possible through the death on the cross and resurrection of Jesus Christ, that repentance, faith, love and obedience are fitting responses to God's initiative of grace toward us, that God desires all men to be saved and to come to the knowledge of the truth, and that the Holy Spirit's power is demonstrated in and through us for the accomplishing of Christ's last commandment, "Go ye into all the world and preach the Gospel to every creature". (Mark 16:15).

INTERPRETATION

8. a. Words importing the singular number include the plural and the converse applies.
- b. Words importing any gender include all other genders.
- c. Words importing persons include corporations, companies, associations and institutions.
- d. A reference to the Corporations Act is a reference to the Corporations Act as modified or amended from time to time.
- e. Unless the context otherwise requires, headings are for ease of reference only and do not affect the construction of this Constitution.

APPLICATION OF CORPORATIONS ACT

9. Unless the contrary intention appears in this Constitution:
 - a. an expression in this Constitution has the same meaning as in that part of the Corporations Act which deals with the same matter as this Constitution; and

- b. an expression which is given a general meaning by the Corporations Act has the same meaning in this Constitution; and
- c. the replaceable rules set out in the Corporations Act do not apply.

MEMBERSHIP

- 10. A member of the Company is a person who:
 - a. is a subscriber to the Constitution; or
 - b. is elected as a member by the Board.
- 11. The Board may elect as a member of the Company any person who:
 - a. consents in writing to being a member; and
 - b. signs a commitment to the Company's Objects, Mission Statement and to the Statement of Faith.

CATEGORIES OF MEMBERSHIP

- 12. At the time of incorporation, all members are ordinary members.
- 13. Additional categories of members may be created from time to time by the Board.

APPLICATION FOR MEMBERSHIP

- 14. Any natural person who is not less than 18 years of age at the date of application may apply for ordinary membership of the Company.
- 15. An application for membership must be:
 - a. in writing in a form approved by the Board; and
 - b. accompanied by the annual subscription, the amount of which is to be determined by the Board.

ADMISSION TO MEMBERSHIP

- 16. As soon as practicable after the Company receives an application for membership which satisfies the requirements of this Constitution:
 - a. the Company must notify the applicant of admission in writing and provide a receipt for the annual subscription; and
 - b. the name and details of the applicant must be entered in the Register.

CESSATION OF MEMBERSHIP

17. If:
 - a. the annual subscription of a member remains unpaid for two months after it becomes payable; and
 - b. a notice of default is given to the member pursuant to a resolution of the Board;

the member ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if the Board thinks fit.
18. Any member may by notice to the Secretary resign as a member with immediate effect or with effect from a particular date subsequent to, but not being later than six months from, the date of that notice.
19. The Board may by resolution of at least three-quarters of its members expel a member of the Company from the Company if the member:
 - a. wilfully refuses or neglects to comply with the provisions of this Constitution; or
 - b. in the Board's opinion ceases:
 - i. to have an active interest in the Company; or
 - ii. to be committed to the Company's Objects, Mission Statement and to the Statement of Faith.
20. Before resolving to expel a member, the Board must give the member:
 - a. at least one week's notice of the Board meeting at which the resolution for expulsion is to be put and of the intended resolution for expulsion; and
 - b. an opportunity of attending the meeting and of giving at it orally or in writing any explanation or defence which the member may desire to offer.

GENERAL MEETINGS

21.
 - a. The Board may, at any time, convene a general meeting.
 - b. The Board must convene in every calendar year a general meeting, to be called the annual general meeting, which is to be held at such time as may be determined by the Board.
 - c. Members may requisition, convene, or join in requisitioning or convening a general meeting in accordance with the Corporations Act.

NOTICE OF GENERAL MEETINGS

22.
 - a. At least 21 days' notice must be given to members of all general meetings.
 - b. A notice convening a general meeting must:

- i. set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
 - ii. state the general nature of any special business to be transacted at the meeting.
- c. For the purposes of the preceding paragraph, special business means any business to be transacted at a meeting other than an annual general meeting and any business to be transacted at an annual general meeting other than the matters listed in paragraphs a. to c. inclusive of the next clause.
- d. The Board may postpone or cancel any general meeting whenever it thinks fit, other than a meeting convened under paragraph c. of the previous clause.
- e. The Board must give notice of the postponement or cancellation to all members.
- f. The failure or accidental omission to send a notice of a general meeting or the adjournment or postponement or cancellation of a general meeting to any member or the non-receipt of a notice by any member does not invalidate the proceedings at or any resolution passed at the general meeting.

ANNUAL GENERAL MEETINGS

23. The business of an annual general meeting is to:
- a. receive and consider the accounts and reports of the Board and the Auditor required by the Corporations Act;
 - b. elect the Directors to be elected pursuant to this Constitution;
 - c. when relevant, appoint and fix the remuneration of the Auditor; and
 - d. transact any other business which under this Constitution may be transacted at a general meeting.

QUORUM AT GENERAL MEETINGS

24. a. No business may be transacted at a general meeting unless a quorum of members is present, in person or by proxy or representative, when the meeting proceeds to business.
- b. A quorum of members is not fewer than 5% of members entitled to vote.
 - c. If a quorum is not present within 30 minutes after the time appointed for a meeting:
 - i. if the meeting was convened on the requisition of members, it is automatically dissolved; or
 - ii. in any other case:

- (1) it stands adjourned to the same time and place 7 days after the meeting, or to another day, time and place determined by the Board; and
- (2) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, a quorum is 2 members.

CHAIRMAN OF GENERAL MEETINGS

25. The Chairman, or in the Chairman's absence, the Deputy Chairman, presides as Chairman at every general meeting. If neither of such officers is present within 10 minutes after the time appointed for the meeting, the members present must choose one of their number as Chairman of the meeting.

ADJOURNMENT OF GENERAL MEETINGS

26. a. The chairman of a meeting at which a quorum is present:
- i. in his or her discretion may adjourn a meeting with the meeting's consent; and
 - ii. must adjourn a meeting if the meeting directs him or her to do so.
- b. An adjourned meeting may take place at a different venue to the initial meeting.
- c. The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.
- d. A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- e. Notice of an adjourned meeting must only be given if a general meeting has been adjourned for one month or more. If notice is required, it must be at least 21 days' notice.
- f. No poll may be demanded on the question of adjournment of a meeting except by the chairman.

RESOLUTIONS AND POLLS AT GENERAL MEETINGS

27. a. Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- b. A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:
- i. the chairman; or

- ii. any five members who have the right to vote at the meeting and who are present in person or by proxy or representative; or
 - iii. members with at least 5% of the votes that may be cast on the resolution.
- c. A poll may be demanded:
- i. before a vote on a show of hands takes place;
 - ii. after a vote on a show of hands takes place but before the declaration of the result of the show of hands; or
 - iii. immediately after the declaration of the result of a show of hands.
- d. Unless a poll is demanded:
- i. a declaration by the chairman that a resolution has been carried or lost; and
 - ii. an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- e. The demand for a poll may be withdrawn.
- f. A poll must be taken at the time and in the manner that the chairman directs.
- g. The result of the poll is the resolution of the meeting at which the poll is demanded.
- h. A poll demanded on the election of the chairman or the adjournment of a meeting must be taken immediately.
- i. After a poll has been demanded at a meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.
28. a. A decision of a general meeting may not be invalidated on the ground that a person voting at the meeting was not entitled to do so.
- b. A challenge to a right to vote at a general meeting may only be made at the meeting.
- c. The chairman must determine such challenge and such determination, if made in good faith, is final.

CHAIRMAN'S CASTING VOTE AT GENERAL MEETINGS

29. The chairman has a casting vote on a show of hands and on a poll in addition to the chairman's votes as a member, proxy or representative.

RIGHT TO VOTE AT GENERAL MEETINGS

30. Every member has one vote.

PROXY

31. A member may by notice to the Secretary appoint another member as his or her proxy to attend and vote at general meetings instead of him or her and any proxy has the same right as the member to speak at the meeting.

32. The notice must be in a form approved by the Board.

33. The notice must be signed:

- a. by the appointor or by his or her attorney; or
- b. if the appointor is an organisation, either under seal or by an officer or attorney of the organisation.

34. The notice may specify the manner in which the proxy is to vote in respect of a particular resolution. Where it does so, the proxy must not vote in any other way. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.

35. a. The notice and, if the notice is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority must be received by the Company at least 48 hours before the meeting.
- b. If a Company meeting has been adjourned, a notice and any authority received by the company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

36. A proxy instrument received at an electronic address specified in the notice of meeting for the receipt of proxy instruments will be taken to have been signed if the appointment of the proxy:
- a. includes or is accompanied by a personal identification code allocated by the company to the member making the appointment; or
 - b. has been authorised by the member in another manner approved by the directors and specified in or with the notice of meeting.

MANAGEMENT OF THE COMPANY

37. The Company's business is managed by or under the direction of the Board which may exercise all the Company's powers which are not required by this Constitution or any law to be exercised by the Company in general meeting.

38. The Board may make any rules not inconsistent with this Constitution but such rules may be altered or revoked by the Company in General Meeting.

COMPOSITION OF THE BOARD

39. The Board consists of:
- a. seven persons elected by the members in accordance with this Constitution; and
 - b. up to two persons appointed by Mercy Ships International which may remove any person so appointed and appoint another instead.
40. The first Board consists of Jack Paul Minton of 17512 CR 4171 W, Lindale, TX, 75771, USA, Robert Wayne Guskin of 15862 Hwy 110, Garden Valley, TX, 75771, USA, John Walter Bradford of 391 VZCR 4928, Ben Wheeler TX 75754, USA, Brian Bruce Ross, 11 Suller Street, Caloundra, QLD, 4551, Brian Robert Kennaugh, 6 Woyin Street, Alexandra Headland, QLD, 4572. They are to hold office subject to this Constitution until the close of the second annual general meeting when they must retire from office (but are eligible for election to the Board at that first annual general meeting).
41. At each annual general meeting, the members must elect one person as a Director to hold office subject to this Constitution until the close of the third annual general meeting following the meeting at which the person is elected when he or she must retire from office but is eligible for re-election.
42. A person is not eligible for election as a Director at any General Meeting unless:
- a. the person or some other member has at least 28 days before the meeting left at the office a notice (endorsed with the person's consent) proposing the person for appointment as a Director (if a person is recommended by the Board for election, such notice is not required); and
 - b. the person is a member; and
 - c. the person has signed a commitment to the Company's Objects, Mission Statement and Policies.

CASUAL VACANCIES ON THE BOARD

43. Any casual vacancy among the Directors elected by the members must be filled by the Directors appointing a person from among the members. A Director appointed in this way holds office until the close of the next annual general meeting when that Director must retire from office but is eligible for re-election.
44. The Board may act even if there are vacancies on the Board.

45. If at any time the number of Directors in office is fewer than four, the Board may meet and act only:
- a. to appoint a Director; or
 - b. to elect a person as a member of the Company; or
 - c. to convene a general meeting.

DEFECT IN APPOINTMENT

46. If it is discovered that:
- a. there was a defect in the appointment of a person as a Director or member of a Board committee; or
 - b. a person appointed to one of those positions was disqualified;
- all acts of the Board or the Board committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

REMUNERATION OF DIRECTORS

47. The Directors may be paid all travelling and other expenses properly incurred by them in attending and returning from Directors' meetings or any committee meetings or General Meetings or otherwise in connection with the Company's business.

CHAIRMAN OF THE BOARD

48. At first Board meeting after each annual general meeting, the Directors must appoint a Director as Chairman and a Director as Deputy Chairman and may remove any person so appointed and appoint another instead. If the Chairman or Deputy Chairman ceases to be a Director, that person must immediately vacate the office of Chairman or Deputy Chairman as the case may be.
49. Any casual vacancy occurring in the office of Chairman or Deputy Chairman must be filled by the Directors. The newly elected person holds office for the remainder of the term of office of the former Chairman or Deputy Chairman but is eligible for re-election.

VACATION OF OFFICE OF DIRECTOR

50. The office of a Director is vacated if that Director:
- a. dies;
 - b. resigns by notice to the Company;

- c. becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- d. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- e. is absent from three consecutive meetings of the Board without leave of the Board;
- f. ceases to be a member of the Company; or
- g. is found guilty of any offence punishable under the criminal or company law of any country or the law of any country relating to charities or trusts; or
- h. is found by a 75% majority of the Board to have made statements or conducted himself or herself in such a way as to discredit or bring into disrepute either himself or herself, the Company, or any member of the Company, or Mercy Ships International; or
- i. otherwise ceases to be, or becomes prohibited from being, a Director by virtue of the Corporations Act.

SECRECY OBLIGATIONS

- 51 Every Director and other agent or officer of the Company must keep secret all aspects of all transactions of the Company, except:
- a. to the extent necessary to enable the person to perform his or her duties to the Company;
 - b. as required by law;
 - c. when requested to disclose information by the Board to the Auditor or a general meeting of the Company;
 - d. as otherwise permitted by the Board.

PROCEEDINGS OF THE BOARD

- 52 The Board may meet together for the dispatch of business, adjourn or otherwise regulate its meetings and proceedings as it thinks fit.
- 53 a. A Board meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.

- b The Directors need not all be physically present in the same place for a Board meeting to be held
- c A Director who participates in a meeting held in accordance with this clause is taken to be present and entitled to vote at the meeting.

BOARD QUORUM

- 54 The quorum necessary for the transaction of the business of the Board is half of the directors plus one.

CHAIRMAN OF BOARD MEETINGS

- 55 The Chairman or, in his or her absence, the Deputy Chairman must take the chair at all Board meetings. If at any meeting neither of such officers is present within 10 minutes after the time appointed for holding the meeting, the Directors present must choose one of their number to be chairman of the meeting.

VOTING AT BOARD MEETINGS

- 56 Questions arising at a Board meeting are decided by a majority of the votes of the Directors present and voting. In case of an equality of votes, the Chairman of the meeting has a casting vote in addition to his or her deliberative vote.

CONVENING OF SPECIAL BOARD MEETINGS

- 57 Upon the written requisition of any two Directors, the Chairman, or Deputy Chairman, or in their absence the Secretary, must convene a special meeting of Board to be held within 14 days after the receipt of the requisition. The requisition must set out the purposes for which the meeting is required.

BOARD RESOLUTIONS WITHOUT A MEETING

- 58
- a If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a Board meeting held on the day on which the document was last signed by a Director.
 - b For the purposes of paragraph a., two or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors on the days on which they signed the separate documents.
 - c Any document referred to in this clause may be in the form of electronic mail, a telex or facsimile transmission.

- d The minutes of Board meetings must record that a meeting was held in accordance with this clause.
- e This clause applies to meetings of Board committees as if all members of the committee were Directors.

MATERIAL PERSONAL INTEREST

- 59 a Unless permitted by the Corporations Act, a Director who has a material personal interest in a matter that is to be considered at a Board meeting:
 - i. must not vote on the matter or be present while the matter is being considered at the meeting; and
 - ii. must not be counted in a quorum in relation to that matter.
- b Paragraph a. does not apply to an interest that the Director has as a member in common with the other members.
- c The quorum for consideration at a Board meeting of a matter in which one or more Directors have a material personal interest is three Directors who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- d Each Director must disclose to the Company any material contract in which the Director is interested, and must provide the Company with the names of the parties to the contract, particulars of the contract, and the Director's interest in the contract.
- e A Director's failure to make disclosure under this clause does not render void or voidable a contract in which the Director has an interest.

MINUTES

- 60 a The Board must cause minutes to be made of:
 - i. the names of the Directors present at all general meetings, Board meetings and meetings of Board committees;
 - ii. all proceedings of general meetings, Board meetings and meetings of Board committees;
 - iii. all appointments of officers;
 - iv. all orders made by the Board and Board committees; and
 - v. all disclosures of interests made pursuant to the previous clause.
- b Minutes must be signed by the chairman of the meeting or by the chairman of the next meeting of the relevant body and if so signed are as between the members conclusive evidence of the matters stated in such minutes.

COMMITTEES

- 61 The Board may delegate any of its powers to committees consisting of such persons as it thinks fit and may revoke such delegation. Any committee so formed must conform to any rules imposed upon it by the Board. The meetings and proceedings of any such committee consisting of two or more members are governed by the clauses of this Constitution for regulating the meetings and proceedings of Board so far as the same are applicable and are not superseded by any rule made by the Board under this clause.

SECRETARY

- 62 The Board must appoint a Secretary for such term, at such remuneration (if any) and upon such conditions as it thinks fit.
- 63 The Secretary may be removed by the Board.

ACCOUNTS

- 64 a The Board must cause the Company to keep accounts of the Company's business in accordance with the Corporations Act.
- b The Board must cause the accounts of the Company to be:
- i. audited; and
 - ii. laid before the annual general meeting of the Company
- in accordance with the Corporations Act.
- 65 A copy of the accounts must be sent to all persons entitled to be sent notices of general meetings together with the notice of the annual general meeting, as required by the Corporations Act.
- 66 The accounts when audited and approved by a general meeting are conclusive except as regards any material error discovered in them within 6 months next after their approval. Whenever any material error is discovered within that period, the accounts must immediately be corrected and then they are conclusive.

NOTICES

- 67 Notices must be in writing.
- 68 A notice may be served by the Company on a member by any of the following methods:
- a by serving it personally on the member;

- b by leaving it at the registered address;
 - c by sending it by post in a prepaid envelope addressed to the member at the registered address;
 - d by sending it by facsimile transmission to a facsimile number nominated by the member for the purpose of serving notices on the member; or
 - e by sending it by electronic mail to an electronic mail address nominated by the member for the purpose of serving notices on the member.
- 69 Each member whose registered address is not in Australia may notify the Company of an address in Australia which is taken to be that member's registered address for the purpose of serving notice.
- 70 Any notice sent by post, air-mail or air courier is taken to have been served on the day following that on which the envelope containing the notice is posted or delivered to the air courier. In proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier. A certificate in writing signed by any officer of the Company that the envelope containing the notice was so addressed and posted is conclusive.
- 71 Any notice sent by facsimile transmission or electronic mail is taken to have been served on receipt by the Company of a transmission report by the machine from which the facsimile or electronic transmission was sent which indicates that the facsimile or electronic mail was sent in its entirety to the facsimile number or electronic mail address of the addressee.
- 72 Any notice sent by post to or left at the registered address is taken to have been properly served even if the member is then dead or bankrupt and whether or not the Company has notice of the death or bankruptcy.
- 73 The signature to any notice given by the Company may be written or printed or a facsimile of the signature may be affixed by mechanical or other means.
- 74 Where a period of notice is required to be given, the day on which the notice is served and the day of doing the act or other thing is not included in the number of days or other period.

INDEMNITY

- 75 Each officer is, to the maximum extent permitted by law, indemnified out of the property of the Company against any liability the officer may incur to another person as such an officer, except to the extent the liability is any of the following:
- a. a liability owed to the Company or a related body corporate;

- b. a liability for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H or under section 1317HA of the Corporations Act; or
- c. a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith.

This clause does not apply to a liability for legal costs.

- 76 Each officer is, to the maximum extent permitted by law, indemnified out of the property of the Company against any liability for legal costs the officer may incur as such an officer, except to the extent the liability is a liability for legal costs incurred in defending an action for a liability incurred as such an officer and the costs are incurred:
- a. in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under the previous clause;
 - b. in defending or resisting criminal proceedings in which the officer is found guilty;
 - c. in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - d. in connection with proceedings for relief to the officer under the Corporations Act in which the court denies the relief.

Paragraph c. does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

- 77 For the purposes of clause 76, the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.
- 78 Clause 75 and clause 76 are separate and independent indemnities and one is not to be read down by reference to the other.
- 79 The Company may pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against a liability incurred by the person as an officer of the Company except in circumstances prohibited by the Corporations Act.

RELIEF FUND

- 80 There is established a relief fund called the Mercy Ships Australia Relief Fund (“the Fund”) for the exclusive purpose of soliciting and receiving gifts fro the carrying out of the objects of the Relief Fund in accordance with the following rules:

- a. The objects and activities of the Fund are limited solely to providing relief to people in a country declared by the Minister for Foreign Affairs to be a developing country.
- b. The Fund may only be used for the objects and activities of the Fund.
- c. Members of the general public are to be invited to make gifts of money or property to the Fund for the Fund's objects and activities.
- d. Money from interest on donations, income derived from donated property, and money from the realisation of such property are to be deposited into the Fund.
- e. The Fund must not receive any money or property for other than the Fund's objects and activities.
- f. A separate bank account for a gift fund is to be opened to deposit money donated to the Fund, including interest accruing on it, and gifts to the Fund are to be kept separate from other funds of the Company. If the deductible gift recipient status of the Fund is revoked, the assets of the Fund must go to a fund, authority or institution under any of the tables in Subdivision 30-B of the *Income Tax Assessment Act, 1997* which is a charity and to which gifts are tax deductible.
- g. Receipts are to be issued in the name of the Fund and proper accounting records and procedures are to be kept and used for the Fund. The receipts must state the name and Australian Business Number of the Fund and the fact that the receipt is for a gift.
- h. The Fund is to be operated on a non-profit basis. None of the money or property accumulated by the Fund may be distributed to the directors or members of the Company or to the committee of management of the Fund apart from proper remuneration for expenses and administrative services.
- i. The Fund must be managed by members of a committee ("the Committee of Management"), a majority of whom must be Responsible Persons. "Responsible Person" means an individual who:
 - i. performs a significant public function;
 - ii. is a member of a professional body having a code of ethics or rules of conduct;
 - iii. is officially charged with spiritual functions by a religious institution;
 - iv. is a director of a company whose shares are listed on the Australian Stock Exchange;
 - v. has received formal recognition from government for services to the community; or
 - vi. is approved as a Responsible Person by the Commissioner.

Subject to any contrary provision in this Deed, every discretion vested in the Committee of Management is absolute and uncontrolled and every power vested in the Committee of Management is exercisable in the committee's absolute and uncontrolled discretion.

POWERS

81. The Committee of Management has and may exercise all the powers of a natural person including, but not so as to limit its powers, the following powers:
- a. to sell or otherwise deal with any part of the Fund;
 - b. to invest any part of the Fund in any manner authorised by these rules;
 - c. to pay all expenses and outgoings in connection with the investment of the Fund or the management and administration of the Fund;
 - d. to improve, repair, maintain and insure any real or personal property forming part of the Fund;
 - e. to appoint, remove or suspend and fix the remuneration of and pay employees or other persons to do anything required for the investment of the Fund or the management and administration of the Fund;
 - f. to institute, defend or settle legal proceedings;
 - g. to compromise and settle all matters arising in relation to the Fund;
 - h. to enter into or be in possession of and manage any part of the Fund;
 - i. to borrow money with or without security;
 - j. to give any charge, mortgage or other security over any part of the Fund;
 - k. to lease property which is part of the Fund for any period and for any rent and upon any conditions which the committee of management considers desirable;
 - l. to supervise the management of any part of the Fund, including the power to repair, demolish, refurbish or construct buildings;
 - m. to guarantee or indemnify any person in relation to the payment of debts or the performance of obligations which arise from the exercise by the committee of management of its powers;
 - n. to acquire by purchase or otherwise any assets for the Fund;
 - o. to draw or accept any negotiable instrument;

- p. to take any steps to obtain contributions to the Fund;
- q. to pay reasonable and proper remuneration in any form to any person other than any member of the committee of management or any director of the Company; and
- r. to do all other acts which are incidental or conducive to achieving the objects of the Fund, whether alone or in partnership with any other person.

ACCOUNTS

82. The Committee of Management must:

- a. keep accounting records which correctly record and explain the transactions and financial position of the Fund;
- b. keep accounting records so that:
 - i. true and fair accounts of the Fund can be prepared from time to time;
 - ii. its accounts can be conveniently and properly audited; and
- c. as soon as practicable after 30 June each year cause to be prepared a Statement of Assets and Liabilities of the Fund for the twelve months ended on 30 June of that year and a Statement of Income and Expenditure of the Fund for the twelve months ended on 30 June of that year (or in the case of the first period ended 30 June following the establishment of the Fund for that period).

AUDIT

83. The Accounts must be audited at least once a year by an auditor appointed by the Committee of Management.

NOTIFICATION OF CHANGES TO RULES

84. The Committee of Management must notify the Australian Taxation Office of any alterations made to the Fund's rules set out in these clauses 80 to 83 inclusive.

CONSTITUTION

OF

MERCY SHIPS AUSTRALIA LIMITED

ACN 097 037 922

Current as at [*insert date*] 2007 and including amendments adopted by the Company at its meeting of [*insert date when last member signs the minutes resolving to amend the Constitution*], 2007.

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