
Constitution of The Kokoda Track Foundation Limited

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Reference

DCF CYM 02 2027 4823

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CONSTITUTION OF THE KOKODA TRACK FOUNDATION LIMITED
ACN 103 660 948

1. PRELIMINARY

1.1 Company limited by guarantee

The Foundation is a company limited by guarantee and the liability of members is limited as provided in this Constitution.

1.2 Basic objects of the Foundation

The Foundation is an Australian philanthropic organisation which aims to repay the selfless help given to Australia during World War II by the "Fuzzy Wuzzy Angels" of Papua New Guinea by helping to improve the lives and futures of their descendants.

It does that by assisting with their education and health care, by trying to protect their environment, by helping to foster the growth of an eco-friendly trekking and tourism industry from which they can benefit, by working to keep the story of Kokoda alive, and by seeking to identify and foster the next generation of Papua New Guinea leaders.

In pursuing these objectives, the Foundation will consult with and seek advice from and partnership with local communities and be respectful of local communities' cultural heritage, environment and customs.

1.3 Additional objects of the Foundation

In addition to the basic objects of the Foundation, the objects and purposes of the Foundation include the doing of all lawful acts as are incidental or conducive to the basic objects of the Foundation, provided that:

- (a) the income and property of the Foundation wheresoever derived is used and applied solely in promotion of its objects and in the exercise of its powers as set out in this Constitution; and
- (b) no dividend shall be paid to, and no income or property of the Foundation shall be distributed among the members.

1.4 Application of income and property

Subject to rules 1.5, 10.2 and 11, the Foundation must apply its income and property solely towards promoting the objects of the Foundation as stated in rules 1.2 and 1.3.

1.5 Certain payments allowed

Rule 1.4 does not prevent the payment of reasonable remuneration to any officer or employee of the Foundation or to any member of the Foundation or other person in return for service rendered to the Foundation. In addition, rule 1.4 does not prevent the Foundation paying to a member:

- (a) interest on money lent by the member to the Foundation at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (b) reasonable remuneration for goods or services supplied by the member to the Foundation in the ordinary course of business; and
- (c) reasonable rent for premises leased by the member to the Foundation.

1.6 Replaceable rules

The replaceable rules referred to in section 141 do not apply to the Foundation and are replaced by the rules set out in this Constitution.

1.7 Definitions

The following definitions apply in this document.

Act means the *Corporations Act 2001* (Cth).

Alternate means an alternate Director appointed under rule 4.1.

Appointor in relation to an Alternate, means the Director who appointed the Alternate.

Board means the Directors acting collectively under this Constitution.

Chairman means a Director (other than the Executive Director) from time to time elected by the Board to be the chairman of the Foundation or, where that person is not available to chair a meeting of the Board or a general meeting of the Foundation, another Director or member nominated or elected to chair that meeting.

Director means a person who is, for the time being, a director of the Foundation including, where appropriate, an Alternate.

Executive Director means, during the term of that appointment, the executive director appointed under rule 7.1.

Foundation means the Foundation named at the beginning of this Constitution whatever its name is for the time being.

Gift Fund has the meaning ascribed to it in rule 22.1.

member means a person whose name is entered in the Register as a member of the Foundation.

ordinary resolution means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.

Register means the register of members kept as required by sections 168 and 169.

Secretary means, during the term of that appointment, a person appointed as a secretary of the Foundation under rule 18.1.

special resolution has the meaning given by section 9.

1.8 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A word (other than a word defined in rule 1.7) which is defined by the Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Act.
- (b) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.
- (c) A reference to:

- (i) the Act or any other legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Foundation, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (d) A singular word includes the plural, and vice versa.
 - (e) A word which suggests one gender includes the other genders.
 - (f) If a word is defined, another part of speech has a corresponding meaning.
 - (g) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (h) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (i) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
 - (j) A reference to a power is also a reference to authority or discretion.
 - (k) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.

2. MEMBERSHIP

2.1 Membership

Subject to rules 2.8 and 2.9, the members are:

- (a) the initial members named in the application for the Foundation's registration; and
- (b) any other person the Board admits to membership.

2.2 Classes of members

There are two classes of members in the Foundation. These classes are:

- (a) individual members (comprising natural persons only); and
- (b) corporate members (comprising corporations, associations and other entities, whether or not incorporated).

2.3 Limited liability of members

If the Foundation is wound up, each member undertakes to contribute to the assets of the Foundation up to an amount not exceeding ten dollars (\$10) for payment of the debts and

liabilities of the Foundation including the costs of the winding up. This undertaking continues for 1 year after a person ceases to be a member.

2.4 Applying to become a member

An application to become a member:

- (a) must be made in writing, in the form and accompanied by the fee prescribed by the Board from time to time, and be signed by the applicant; and
- (b) must be lodged with the Executive Director or Secretary.

2.5 Consideration of application

Once an application for membership is received, the Board must:

- (a) consider the application at the next meeting of the Board;
- (b) consider whether the applicant is fit and proper to be a member; and
- (c) notify the applicant in writing of the outcome of the application, but it need not provide reasons why an applicant was rejected.

2.6 Effective date of admission as a member

The admission of a person as a member is effective when the name of the person has been entered in the Register as a member.

2.7 Terms of membership

- (a) Each member agrees to abide by the terms of this Constitution as amended from time to time in accordance with the Act.
- (b) Each member agrees to notify the Foundation in writing of a change of his or her address within 21 days.
- (c) Duration of a person's membership is for a period of 3 years commencing on the date of admission as a member, unless the member resigns or is expelled earlier.

2.8 Resigning as a member

A member may resign from the Foundation by giving written notice to the Board.

2.9 Expelling a member

- (a) The Board may, by resolution, expel from the Foundation any member:
 - (i) who does not comply with this Constitution or any by-laws, rules or regulations of the Foundation; or
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Foundation,and remove that member's name from the Register.
- (b) At least 21 days before the Board holds a meeting to expel a member, the Board must give a written notice to the member which states:
 - (i) the allegations against the member;
 - (ii) the proposed resolution for the member's expulsion;

- (iii) that the member has an opportunity at the meeting to address the allegations either orally or in writing; and
 - (iv) that if the member notifies the Secretary in writing at least 48 hours before the meeting, the member may elect to have the question of that member's expulsion dealt with by the Foundation in general meeting.
- (c) The Foundation must expel a member and remove the member's name from the Register where:
- (i) a general meeting is held to expel a member; and
 - (ii) a resolution is passed at the meeting by a majority of two-thirds of those present and voting for the member to be expelled. The vote must be taken by ballot.
- (d) A member expelled from the Foundation does not have any claim on the Foundation, its funds or property.

3. DIRECTORS

3.1 Number of Directors

The Foundation must have at least 5 Directors and not more than 12 Directors.

3.2 Eligibility

- (a) A Director must be a member or a representative of a corporate member. Neither the auditor of the Foundation nor any partner, director or employee of the auditor is eligible to act as a Director.
- (b) [Deleted]

3.3 Appointment by the Board

Subject to this Constitution, the Board may appoint a person to be a Director at any time (except during a general meeting) as an additional director or to fill a casual vacancy. Any Director so appointed automatically retires at the next annual general meeting (unless he or she was also appointed as Executive Director) and is eligible for election by that general meeting.

3.4 Election by general meeting

Subject to this Constitution and section 201E, the Foundation may elect Directors by ordinary resolution.

3.5 Eligible candidates

The Foundation in general meeting cannot validly elect a person as a Director unless:

- (a) the person retires under rule 3.3 or 3.6 and seeks re-election;
- (b) the Board recommends the appointment; or
- (c) at least 10 business days before the meeting at which the relevant resolution will be considered, the Foundation receives both:
 - (i) a nomination of the person by 3 members (other than the person); and

- (ii) a consent to act as a Director signed by the person.

The Foundation must notify members of every candidate for election as a Director at least 7 days before the relevant general meeting.

3.6 Periodic retirement of Directors

- (a) Subject to paragraph (b) and rule 7.4, a Director must retire at the third annual general meeting following the Director's election or re-election. A Director retiring under this paragraph is eligible for re-election.
- (b) Subject to rule 7.4, if a Director has been elected or re-elected as contemplated by paragraph (a) three times in succession, then at the end of the third term the Director may seek re-election, but if re-elected must retire at the next annual general meeting following such re-election. A Director retiring under this paragraph is eligible for re-election, but must retire (and remains eligible for re-election) at each subsequent annual general meeting.

3.7 [Deleted]

3.8 Time of retirement

A Director's retirement under rule 3.3 or 3.6 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

3.9 Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Foundation under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings (either personally or by an Alternate) for a continuous period of 12 months without leave of absence from the Board;
- (e) resigns by notice in writing to the Foundation;
- (f) is removed from office under rule 3.10; or
- (g) [deleted]
- (h) is an Executive Director and ceases to hold that office.

3.10 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, the Foundation by ordinary resolution may remove a Director from office. The power to remove a Director under this rule is in addition to section 203D.

3.11 Too few Directors

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;

- (b) to convene a meeting of members; and
- (c) in emergencies.

4. ALTERNATE DIRECTORS

4.1 Appointment of Alternates

Subject to rule 3.2, a Director (other than an Alternate) may appoint a person who is approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director provided the Foundation has received a written consent to the appointment from the Alternate.

4.2 Notice of Board meetings

If the Appointor requests the Foundation to give the Alternate notice of Board meetings, the Foundation must do so. Unless the Appointor has requested it, the Foundation need not give notice of Board meetings to an Alternate.

4.3 Obligations and entitlements of Alternates

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) if also a Director, has a separate right to vote as Alternate;
- (c) if Alternate for more than 1 Appointor, has a separate right to vote in place of each Appointor;
- (d) when acting as Alternate, is an officer of the Foundation and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director; and
- (e) with the approval of the Board, is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or of the Foundation or while otherwise engaged on the business of the Foundation on the same basis as other Directors but is not entitled to any other remuneration from the Foundation.

4.4 Termination of appointment

The Appointor may at any time revoke the appointment of a person as an Alternate whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) the Appointor ceases to be a Director; or
- (b) an event occurs which would cause the Alternate to cease to be a Director under rule 3.9 if the Alternate were a Director.

4.5 Appointments and revocations in writing

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Foundation.

5. POWERS OF THE BOARD

5.1 Powers generally

Except as otherwise required by the Act, any other applicable law or this Constitution, the Board:

- (a) has power to manage the business of the Foundation; and
- (b) may exercise every right, power or capacity of the Foundation to the exclusion of the Foundation in general meeting and the members.

5.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 12; or
- (b) in accordance with a delegation of the power under rule 7 or 8.

6. EXECUTING NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which cheques and other negotiable instruments can be executed, accepted or endorsed for and on behalf of the Foundation. The Foundation may execute, accept, or endorse cheques and other negotiable instruments only in the manner decided by the Board.

7. EXECUTIVE DIRECTOR

7.1 Appointment of Executive Director

The Board may appoint a person to be the Executive Director either for a specified term (but not for life) or without specifying a term. If the person is not already a Director, he or she must also be appointed as an additional Director under rule 3.3. Subject to this Constitution, the Executive Director has all the duties, and can exercise all the powers and rights, of a Director.

7.2 Powers of Executive Director

The Board may delegate any of the powers of the Board to the Executive Director:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board,

and may revoke the delegation at any time. Unless otherwise determined by the Board, the Executive Director will be the principal spokesman of the Foundation.

This rule does not limit rule 8.

7.3 [Deleted]

7.4 Retirement and removal of Executive Director

The Executive Director is not:

- (a) required to retire at the next annual general meeting under rule 3.3; or
- (b) required to retire under rule 3.6,

but (subject to any contract between the Foundation and that Executive Director) is otherwise subject to the same rules regarding resignation, removal and retirement from office as the other Directors.

7.5 Termination of appointment of Executive Director

The appointment of the Executive Director terminates if:

- (a) the Executive Director ceases for any reason to be a Director; or
- (b) the Board removes the Executive Director from the office of Executive Director (which, without affecting the rights of the Executive Director under any contract between the Foundation and the Executive Director, the Board has power to do),

whether or not the appointment was expressed to be for a specified term.

8. DELEGATION OF BOARD POWERS

8.1 Power to delegate

The Board may delegate any of its powers to:

- (a) a single director; or
- (b) a committee of two or more directors with or without other persons.

Section 198D(2) and (3) will apply to the powers so delegated.

8.2 Establishment of committees

A committee established pursuant to 8.1 must be established by the Board and must be chaired by a Director.

8.3 Reporting by committees

A committee established pursuant to 8.1 must report back regularly through its chairman to the Board and, if required by the terms of its establishment, provide an annual written report to the Board.

8.4 Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

8.5 Terms of delegation

A delegation of powers under rule 8.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

8.6 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this Constitution which regulate the meetings and proceedings of the Board.

8.7 Attorneys and agents

The Board may by resolution, power of attorney or written instrument appoint any person or body of persons to be the attorney or agent of the Foundation:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution);
- (c) for the period; and
- (d) subject to such conditions

as the Board may from time to time think fit.

8.8 Protection of third parties

Any resolution, power of attorney or written instrument under rule 8.7 may contain provisions for the protection and convenience of persons dealing with the attorney or agent as determined by the Board and may also authorise the attorney or agent to delegate all or any of the powers, authorities and discretions for the time being vested in the attorney or agent.

9. DIRECTORS' DUTIES AND INTERESTS

9.1 Compliance with duties under the Act

Each Director must comply with sections 180 to 183.

9.2 Director can hold other offices etc

A Director may:

- (a) hold any office or place of profit or employment other than that of the Foundation's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Foundation) or partnership other than the Foundation's auditor; or
- (c) be a creditor of any corporation (including the Foundation) or partnership; or
- (d) enter into any agreement with the Foundation.

9.3 Disclosure of interests

Each Director must comply with section 191.

9.4 Director interested in a matter

Each Director must comply with section 195 in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
- (b) the Foundation may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Foundation;
- (c) the Director may retain benefits under the transaction even though the Director has the interest; and
- (d) the Foundation cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191, paragraph (c) applies only if it is disclosed before the transaction is entered into.

9.5 Agreements with third parties

The Foundation cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

9.6 Obligation of secrecy

Every Director and Secretary must keep the transactions and affairs of the Foundation and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Foundation;
- (b) by the Board or the Foundation in general meeting; or
- (c) by law.

The Foundation may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Foundation.

10. DIRECTORS' REMUNERATION

10.1 Restrictions on payments to Directors

Subject to rule 10.2 and rule 11 the Foundation must not pay fees or other remuneration to a Director.

10.2 Payments to Directors with Board approval

With the approval of two-thirds of the Board the Foundation may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any service rendered by the Director to the Foundation, not being a service provided as a Director, and provided that any such service is rendered in a professional or technical capacity and any amount payable is on reasonable commercial terms;

- (c) reasonable remuneration where the Director is an employee of the Foundation and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Director to the Foundation at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (e) reasonable remuneration for goods supplied by the Director to the Foundation in the ordinary course of business; and
- (f) reasonable rent for premises leased by the Director to the Foundation.

11. OFFICERS' INDEMNITY AND INSURANCE

11.1 Indemnity

Subject to and so far as permitted by Act and any other applicable law:

- (a) the Foundation must, to the extent the person is not otherwise indemnified, indemnify every officer of the Foundation and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Foundation or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Foundation or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Foundation may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

11.2 Insurance

Subject to the Act and any other applicable law, the Foundation may enter into, and pay premiums on, a contract of insurance in respect of any person.

11.3 Former officers

The indemnity in favour of officers under rule 11.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Foundation or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

11.4 Deeds

Subject to the Act and any other applicable law, the Foundation may, without limiting a person's rights under this rule 11, enter into an agreement with a person who is or has been an officer of the Foundation or any of the Foundation's subsidiaries, to give effect to the rights of the person under this rule 11 on any terms and conditions that the Board thinks fit.

12. BOARD MEETINGS

12.1 Minimum number of meetings

The Board must meet at least twice a year.

12.2 Convening Board meetings

The Secretary must, on request from the Chairman or the Executive Director, and a Director may at any time convene a Board meeting.

12.3 Notice of Board meeting

The convenor of each Board meeting:

- (a) subject to paragraph (b), must give 7 days' notice in writing of the meeting (and, if it is adjourned, of its resumption) individually to:
 - (i) each Director who is in Australia; and
 - (ii) each Alternate in respect of whom the Appointor has given notice under rule 4.2 requiring notice of Board meetings to be given to that Alternate or whose Appointor is not given notice due to being outside Australia; and
- (b) in circumstances of genuine emergency as determined by the Chairman or the Executive Director (in either case, in his or her sole discretion), must give at least 24 hours notice of the meeting and may give that notice orally (including by telephone),

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

12.4 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the chairman of the meeting is located.

12.5 Chairman

The Board may elect a Director as Chairman and decide the period for which that Director holds that office. If there is no Chairman or the Chairman is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

12.6 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is at least half of the total number of Directors and a quorum must be present for the whole meeting. An Alternate who is also a Director or a person who is an Alternate for more than 1 Appointor may only be counted once toward a quorum. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

12.7 Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The Chairman does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

12.8 Procedural rules

The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides.

12.9 Written resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

12.10 Additional provisions concerning written resolutions

For the purpose of rule 12.9:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document;
- (b) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and
- (d) a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Foundation is a document signed by that Director at the time of its receipt by the Foundation.

12.11 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

13. MEETINGS OF MEMBERS

13.1 Annual general meeting

The Foundation must hold an annual general meeting as required by section 250N.

13.2 Calling meetings of members

A meeting of members:

- (a) may be convened at any time by the Board or a Director; and

- (b) must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

13.3 Notice of meeting

Subject to rule 13.4, at least 21 days' written notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Director (other than an Alternate); and
- (c) the auditor.

The notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

13.4 Short notice

Subject to sections 249H(3) and (4):

- (a) if the Foundation has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

13.5 Postponement or cancellation

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

13.6 Fresh notice

If a meeting of members is postponed or adjourned for 1 month or more, the Foundation must give new notice of the resumed meeting.

13.7 Technology

The Foundation may hold a meeting of members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

13.8 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

14. PROCEEDINGS AT MEETINGS OF MEMBERS

14.1 Member present at meeting

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

14.2 Quorum

The quorum for a meeting of members is 3 members. Each individual present may only be counted once toward a quorum. If a member has appointed more than 1 proxy or representative only 1 of them may be counted towards a quorum.

14.3 Quorum not present

If a quorum is not present within 30 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

14.4 Chairing meetings of members

If the Board has appointed a Director as Chairman, that Director should also chair meetings of members. If:

- (a) there is, for the time being, no Chairman appointed by the Board; or
- (b) the Chairman is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member or Director present to chair the meeting.

14.5 Attendance at general meetings

- (a) Every member has the right to attend and speak at all meetings of members.
- (b) Every Director has the right to attend and speak at all meetings of members.
- (c) The auditor has the right to attend any meeting of members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

14.6 Adjournment

Subject to rule 13.6, the chairman of a meeting of members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn it to another time and place.

14.7 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

15. PROXIES, ATTORNEYS AND REPRESENTATIVES

15.1 Appointment of proxies

A member may appoint a proxy to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Foundation:

- (a) that complies with section 250A(1); or
- (b) in any other form and mode that is, and is signed or otherwise authenticated by the member in a manner, satisfactory to the Board.

15.2 Member's attorney

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

15.3 Deposit of proxy appointment forms, powers of attorney and proxy appointment authorities

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Foundation in accordance with section 250B(3) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

15.4 Corporate representatives

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

15.5 Standing appointments

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

15.6 Suspension of proxy or attorney's powers if member present

A proxy or attorney has no power to act for a member at a meeting at which the member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a member at a meeting at which the member is present by attorney.

15.7 Priority of conflicting appointments of attorney or representative

If more than 1 attorney or representative appointed by a member is present at a meeting of members and the Foundation has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 15.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

15.8 More than 1 current proxy appointments

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Foundation receives a further appointment of proxy from that member which would result in there being more than 1 proxy of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

15.9 Continuing authority

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Foundation has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

16. ENTITLEMENT TO VOTE

16.1 Number of votes

Subject to section 250A(4):

- (a) each member has 1 vote on a show of hands or a poll; and
- (b) a member who is present and entitled to vote and is also a proxy, attorney or representative of another member has 1 vote on a show of hands.

16.2 Casting vote of Chairman

The Chairman of a meeting of members does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

16.3 Voting restrictions

If:

- (a) the Act requires that some members are not to vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

those members have no right to vote on that resolution and the Foundation must not count any votes purported to be cast by those members. If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), on a show of hands the vote is invalid and the Foundation must not count it and on a poll rule 17.3(c) applies.

16.4 Decision on right to vote

A member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the Chairman, whose decision is final.

17. HOW VOTING IS CARRIED OUT

17.1 Method of voting

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 17.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the Chairman's declaration of a decision on a show of hands is final.

17.2 Demand for a poll

A poll may be demanded on any resolution (except a resolution concerning the election of the chairman of a meeting) by:

- (a) at least 5 members entitled to vote on the resolution; or
- (b) the Chairman.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

17.3 When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 17.3(c), in the manner that the Chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 17.3(c), in the manner that the Chairman of the meeting directs;
- (c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and

- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

18. SECRETARY

18.1 Appointment of Secretary

The Board:

- (a) must appoint at least 1 individual; and
- (b) may appoint more than 1 individual,

to be a Secretary either for a specified term or without specifying a term. A Director may be appointed as a Secretary.

18.2 Terms and conditions of office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

18.3 Cessation of Secretary's appointment

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Foundation under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Foundation; or
- (e) is removed from office under rule 18.4.

18.4 Removal from office

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

19. MINUTES

19.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Foundation's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 8);
- (d) resolutions passed by Directors without a meeting; and

- (e) disclosures and notices of Directors' interests,
to be kept in accordance with sections 191, 192 and 251A.

19.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

19.3 Inspection of minute books

The Foundation must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B.

20. SEALS OF THE FOUNDATION

20.1 Common seal

The Board:

- (a) may decide whether or not the Foundation has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

20.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

20.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by 1 Director and 1 Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

21. FINANCIAL REPORTS AND AUDIT

21.1 Foundation must keep financial records

The Board must cause the Foundation to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and, where the financial statements are required by Part 2M.3 to be audited or reviewed, the auditor to inspect those records at all reasonable times.

21.2 Financial reporting

If required by Part 2M.3, the Board must cause the Foundation to prepare a financial report and a directors' report that comply with Part 2M.3 and must report to members in accordance with section 316A.

21.3 Audit

If required by Part 2M.3, the Board must cause the Foundation's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

21.4 Conclusive reports

Audited or reviewed financial reports laid before the Foundation in general meetings are conclusive except as regards errors notified to the Foundation within 3 months after the relevant general meeting. If the Foundation receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

21.5 Inspection of financial records and books

Subject to rule 19.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Foundation except as authorised by the Board or by ordinary resolution.

22. ESTABLISHMENT AND OPERATION OF GIFT FUND

22.1 Maintaining Gift Fund

The Foundation must maintain a fund (the **Gift Fund**) for the purpose primarily of providing relief to Papua New Guinea or any other country declared by the Minister for Foreign Affairs as a developing country (the **Principal Purpose**):

- (a) to which gifts of money or property for the Principal Purpose are to be made;
- (b) to which any money received by the Foundation because of those gifts is to be credited;
- (c) to which the public is invited to contribute; and
- (d) which does not receive any other money or property.

22.2 Limits on use of Gift Fund

The Foundation must use the following only for the Principal Purpose of the Foundation:

- (a) gifts made to the Gift Fund; and
- (b) any money received because of those gifts.

22.3 Winding up of Gift Fund

At the first occurrence of:

- (a) the winding up of the Gift Fund; or
- (b) the Foundation ceasing to be an approved relief fund under Item 9.1.1 Section 30-80 of the *Income Tax Assessment Act 1997*,

any surplus assets of the Gift Fund must be transferred to:

- (c) an organisation who is operating in the same developing countries;
- (d) an approved relief fund under Item 9.1.1 Section 30-80 of the *Income Tax Assessment Act 1997*; or
- (e) as the Gift Fund Committee decides.

Where gifts to an eligible charity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the *Income Tax Assessment Act 1997* are satisfied, a transfer under this rule must be made in accordance with those conditions.

22.4 Bank account

The Foundation must maintain a separate bank account for the Gift Fund.

22.5 Gift Fund Committee

The Board must create a committee (the **Gift Fund Committee**) which has sole control of the Gift Fund. The Gift Fund Committee must comprise:

- (a) a minimum of three persons; and
- (b) a majority of persons who have a degree of responsibility to the community at large.

If the requirement in paragraph (a) or (b) is at any time not met, the Gift Fund Committee must not exercise any discretion or power until the requirement is met.

22.6 Qualifications of Gift Fund Committee

For the purposes of rule 22.5(b), a person who has a degree of responsibility to the community at large is an individual who:

- (a) performs a significant public function;
- (b) is a member of a professional body having a code of ethics or rules of conduct;
- (c) is officially charged with spiritual functions by a religious institution;
- (d) is a director of a company whose shares are listed on the Australian Securities Exchange; or
- (e) has received formal recognition from government for services to the community'

and is approved as a Responsible Person by the Commissioner of Taxation.

22.7 Receipts

Receipts issued for gifts to the Gift Fund must state:

- (a) the name of the Foundation and the Gift Fund;
- (b) the Australian Business Number applicable to the Foundation; and
- (c) the fact that the receipt is for a gift.

23. REGISTER OF MEMBERS

The Foundation must set up and maintain a register of members.

In accordance with section 169, the Register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the Register is made;
- (c) the name and details of each person who stopped being a member within the last 7 years;
- (d) the date on which the person stopped being a member; and
- (e) an index of members' names if the Foundation has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

24. WINDING UP

If the Foundation is wound up any surplus property must not be paid to members but must be paid or transferred to another corporation which complies with section 150(1) and which in the sole opinion of the liquidator has similar objects to those of the Foundation.

25. NOTICES

25.1 Notices by Foundation

A notice is properly given by the Foundation to a person if it is:

- (a) in writing signed on behalf of the Foundation (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

25.2 Overseas members

A member whose registered address is not in Australia may notify the Foundation in writing of an address in Australia to which notices may be sent.

25.3 When notice is given

A notice to a person by the Foundation is regarded as given and received or given under section 249J(3):

- (a) if it is delivered personally:

- (i) by 5 pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;
- (b) if it is sent by fax or electronic message:
- (i) by 5 pm (local time in the place from which it is sent or given) on a business day – on that day; or
 - (ii) after 5 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day; and
- (c) if it is sent by mail:
- (i) within Australia - 1 business day after posting; or
 - (ii) to a place outside Australia - 3 business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

25.4 Business days

For the purposes of rule 25.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

25.5 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

25.6 Notices to "lost" members

If:

- (a) on 2 or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register or notified to the Foundation under rule 25.2,

the Foundation may give effective notice to that member by exhibiting the notice at the Foundation's registered office for at least 48 hours.

This rule ceases to apply if the member gives the Foundation notice of a new address.

26. AMENDING THIS CONSTITUTION

The Foundation may revoke, add to or vary any of the provisions of this Constitution, so long as:

- (a) no part of the Gift Fund or the income of the Gift Fund becomes subject to any institution, organisation, fund or authority other than an approved relief organisation; and

- (b) unless the Commissioner of Taxation consents to the revocation, addition or variation:
 - (i) no amendment is made to or affecting the objects or purpose of the Foundation; and
 - (ii) no amendment is made which authorises the Gift Fund Committee to invest money of the Gift Fund other than in a manner in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia,

The Foundation must notify the Commissioner of Taxation of any amendment under paragraph (b) prior to the amendment being effected.¹

¹ This Constitution was first adopted by special resolution on 2 March 2006 and was amended by special resolution on 16 March 2011.