

---

**Corporations Law of Victoria**

**Constitution**

**of**

**MSI Asia Pacific (ACN 082 496 697)**

**A Company Limited by Guarantee**

**Mallesons Stephen Jaques**  
Solicitors

Rialto  
525 Collins Street  
Melbourne Vic 3000  
Telephone (03) 9619 0619  
Fax (03) 9614 1329  
DX 101

MEL\_CORP 151927

# Contents

---

## Constitution

<b>1</b>	<b>Name of Company</b>	<b>vi</b>
<b>2</b>	<b>Objects of the Company</b>	<b>vi</b>
<b>3</b>	<b>Limited liability</b>	<b>vii</b>
<b>4</b>	<b>Accounts</b>	<b>vii</b>
<b>5</b>	<b>The Subscribers</b>	<b>viii</b>
<b>1</b>	<b>Preliminary</b>	<b>1</b>
	Definitions	1
	Interpretation	2
	Headings	2
	Continuous nature of powers	2
<b>2</b>	<b>Activities of the Company</b>	<b>2</b>
<b>3</b>	<b>Membership of the Company</b>	<b>3</b>
	Number of Members	3
	Appointment of Members	3
	Terms and Conditions of Membership	3
	Resignation of Member	3
	Board May Terminate Membership	3
	Notice	3
	Explanation or defence	3
	Referral to general meeting	3
	Other Loss of Membership	3
<b>4</b>	<b>General meetings</b>	<b>4</b>
	Board's power to convene general meeting	4
	Notice of general meeting	4
	Contents of notice	4
	Auditor's right to attend general meetings	4
	Cancellation or postponement of general meeting	4
<b>5</b>	<b>Proceedings at general meetings including annual general meetings</b>	<b>5</b>
	Business of annual general meeting	5
	Special business	5
	Quorum	5
	Quorum continues once present	5
	If quorum not present	5
	Chair	5
	Votes, polls and proxies	5
<b>6</b>	<b>Register of Members</b>	<b>6</b>
<b>7</b>	<b>Board</b>	<b>6</b>
	Composition of Board	6
	Ordinary members - maximum and minimum numbers	6
	Nominations	6
	Ballots	6
	Power to co-opt/fill casual vacancies	6

<b>8</b>	<b>Rotation of Directors</b>	<b>7</b>
<b>9</b>	<b>Vacation of office and conflict of interest</b>	<b>7</b>
	Removal from office	7
	Vacation of office	7
	Director's interests	7
	Permitted activities	8
	Contracts not void	8
	Signing of Contracts	8
	Definition of Contract	8
<b>10</b>	<b>Powers of the Board</b>	<b>9</b>
	Management of Company	9
	Finance	9
	Regulations	9
<b>11</b>	<b>Proceedings of Board</b>	<b>9</b>
	Meetings	9
	Quorum	10
	Convening meetings	10
	Director Outside Australia	10
	Appointment of proxy	10
	Chairman and Deputy Chairman	10
	How questions decided	10
	Written Resolution	10
	Telephone meeting	11
	Presence throughout telephone meeting	11
	Effect of minute	11
	Validity of acts of Directors	11
<b>12</b>	<b>Committees</b>	<b>11</b>
<b>13</b>	<b>Developing Countries Fund</b>	<b>12</b>
	Establishment of the Developing Countries Fund	12
	The Developing Countries Fund Committee	12
<b>14</b>	<b>Minutes</b>	<b>13</b>
<b>15</b>	<b>Authentication of documents</b>	<b>13</b>
	Company seals	13
	Use of common seal	13
	Negotiable instruments	13
<b>16</b>	<b>Inspection of books</b>	<b>13</b>
	Powers of Board	13
	Member's rights of inspection	13
	Director's rights of inspection	14
	Limitation	14
	Definition	14
<b>17</b>	<b>Service of documents</b>	<b>14</b>
	Service by Company	14
	Member outside Australia	14
	Service by post-deemed delivery	14
	Evidence	15
	Service by fax	15

Fine Print	15
<b>18 Accounts</b>	<b>15</b>
Accounts required	15
Location and inspection of accounts	16
Annual general meeting	16
Notice to members	16
<b>19 Audit</b>	<b>16</b>
<b>20 Non-profit company- application of Company property</b>	<b>16</b>
<b>21 Remuneration and expenses</b>	<b>16</b>
Certain payments allowed	16
Payments to Directors in salaried office	17
Other payments to Directors	17
<b>22 Indemnity</b>	<b>17</b>
Indemnity of officers, Auditors and agents	17
<b>23 Winding up</b>	<b>17</b>
Surplus from the Developing Countries Fund	17
Other Property of the Company	18
<b>Annexure 1 - Cancellation or postponement of general meeting</b>	<b>19</b>
Cancellation or postponement of general meeting	19
Contents of notice	19
Timing of postponed meeting	19
Business at postponed meeting	19
Failure to comply with notice	19
Extension of proxy	19
When cancellation/postponement not permitted	20
<b>Annexure 2 - Voting, polls and proxies</b>	<b>21</b>
<b>24 Proceedings at general meetings including annual general meetings</b>	<b>21</b>
Casting vote	21
How questions decided	21
Effect of declaration of result	21
Poll - general	21
Certain polls to be held immediately	21
Meeting can continue on other business	21
Objection to voting qualification	21
Ruling on disputed vote	22
Adjournment	22
Fresh notice of adjourned meeting	22
<b>25 Votes of Members</b>	<b>22</b>
Voting rights	22
Right to appoint proxy	22
Instrument of proxy	22
Example	22
Right to appoint attorney	23
Receipt of proxy and other instruments	23
Validity of vote in certain circumstances	23

**Corporations Law of Victoria**

**Constitution**

**of**

**MSI Asia Pacific**

**(ACN 082 496 697)**

**A Company Limited by Guarantee**

## **1 Name of Company**

---

The name of the company is MSI Asia Pacific (“**the Company**”).

## **2 Objects of the Company**

---

2.1 The principal objects for which the Company is established is to work in partnership with other companies formed by MSI Asia Pacific, governments, non-government organisations, health professionals and local communities around the world to provide to the inhabitants of developing and developed countries:

- (a) increased access to reproductive health care and mother and child health services by:
  - (i) providing education, information and communication services to both women and men;
  - (ii) increasing male awareness of their responsibilities as partners and parents
  - (iii) running educational activities on reproductive health, maternal and child health, sanitation and nutrition with youth groups, schools, community organisations and other at-risk and vulnerable groups;
  - (iv) responding to the needs and concerns of adolescents
  - (v) promoting awareness of reproductive tract infections, STI’s, HIV and AIDS and other sexual health issues;
  - (vi) providing a comprehensive choice of quality reproductive health services, methods and information; and
  - (vii) designing and delivering programs of reproductive health care which are culturally appropriate and respond to local needs; and
  - (viii) providing technical assistance to governments and other organisations to improve their capacity to deliver affective, quality reproductive health services;
- (b) ongoing reproductive health care and family planning services support including:

- (i) establishing locally staffed and managed organisations and providing ongoing technical assistance, training and fundraising support;
- (ii) providing assistance with the design monitoring and evaluation of projects; and
- (iii) helping partner organisations to ensure that those organisations are professionally and accountably managed; and

to do everything incidental or conducive to the attainment of any, or all, of the above purposes.

- 2.2 To obtain, collect and receive money and funds by way of contributions, donations, subscriptions, legacies, grants, national appeals or any other lawful method and accept and receive gifts of property of any description (whether subject to any special trusts or not) for or towards the objects of the Company or any of them.
- 2.3 The Company has all the powers of a natural person, including all powers of investment and dealing with assets of all kinds.

### **3 Limited liability**

---

- 3.1 The liability of the members of the Company is limited.
- 3.2 Every member of the Company undertakes to contribute any amount required not exceeding \$10 to the assets of the Company if it is wound up while the member is a member, or within one year after the member ceases to be a member, for payment of the debts and liabilities of the Company contracted before the member ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves.

### **4 Accounts**

---

- 4.1 True accounts must be kept of:
  - the moneys received and expended by the Company,
  - the matters in respect of which the receipt and expenditure takes place; and
  - the property, credits and liabilities of the Company.
- 4.2 Subject to any reasonable restrictions as to the time and manner of inspection that are imposed under the Constitution of the Company, the accounts must be open to the inspection of the members.
- 4.3 Once at least in every year, the accounts of the Company must be examined by a properly qualified auditor or auditors who must report to the members in accordance with the **Corporations Law** of Victoria.

## 5 The Subscribers

---

WE the subscribers whose names, addresses and occupations are set out below wish to form a company under this Constitution.

	Subscriber	Witness:
<b>Name:</b>	Ms Julie Mundy	
<b>Address:</b>	39 Clyde Street St Kilda Vic 3182	
<b>Occupation</b>	Aid Worker	
<b>Signature:</b>		
<b>Name:</b>	Ms Jane Black	
<b>Address:</b>	Homefarm' 48 Southend Garsington OX44 9DJ United Kingdom	
<b>Occupation:</b>	Aid Worker	
<b>Signature:</b>		
<b>Name:</b>	Mr James Rock	
<b>Address:</b>	108/G Thanlwin Road Bahan Yangon Myanmar	
<b>Occupation:</b>	Aid Worker	
<b>Signature:</b>		
<b>Name:</b>	Dr Timothy Black	
<b>Address:</b>	'Goresdene', Mill Lane Lower Beeding, Nr Horsham, West Sussex United Kingdom	
<b>Occupation:</b>	Reproductive Health Consultant	
<b>Signature:</b>		
<b>Name:</b>	Dr Timothy Rutter	
<b>Address:</b>	153 Cleveland Street London W1P 5PG United Kingdom	
<b>Occupation:</b>	Consultant Obstetrician	
<b>Signature:</b>		

**Corporations Law of Victoria**

**Constitution**

of

**MSI Asia Pacific (ACN 082-496-697)**

**A Company Limited by Guarantee**

## **1 Preliminary**

---

### **Definitions**

1.0 The following words have these meanings in the Constitution unless the contrary intention appears.

**Constitution** means this Constitution as altered from time to time. A reference to a provision of the Constitution is a reference to that provision as altered from time to time.

**Auditor** means the auditor for the time being of the Company.

**Board** means all or some of the Directors, acting as board of directors.

**Chair** means the chair of the Board appointed under clause 11.7 and **Deputy Chairman** means the deputy chair of the Board appointed under clause 11.7.

**Committee** means any Director or members acting as a committee of the Board and includes advisory and specialist committees established by the Board.

**Director** means a director of the Company; member of the Board.

**Company** means the abovenamed company.

**Corporations Law** means the **Corporations Law** of Victoria.

**Developing Countries Fund** means a fund established under clause 13.

**Developing Countries Fund Committee** means a committee established under clause 13.

**Member** means a member of the Company.

**Memorandum** means the memorandum of association of the Company as altered from time to time.

**Proxy** means a proxy for a Member appointed under clause 25.2 and includes an attorney appointed by a Member under clause 25.5 and a representative appointed by a Member under section 249(3) of the Corporations Law.



**Registered Office** means the registered office for the time being of the Company.

**Seal** means the common seal of the Company.

**Secretary** means a person appointed as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Board to perform all or any of the duties of a secretary of the Company.

## **Interpretation**

1.1 In this Constitution unless the contrary intention appears:

- (a) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to writing includes typewriting, printing, telex, telegram, facsimile and other modes of representing or reproducing words in a visible form;
- (e) a reference to the Constitution is a reference to one of the clauses;
- (f) a reference to a section is a reference to a section of the Corporations Law; and
- (g) a reference to the Corporations Law or to a provision of the Corporations Law, means the Corporations Law or that provision as amended from time to time, or any statute, code or provision enacted in its place, whether by Victoria or the Commonwealth of Australia, and includes regulations and other instruments under it.

## **Headings**

1.2 Headings are inserted for convenience and do not affect the interpretation of the Constitution.

## **Continuous nature of powers**

1.3 Powers conferred on the Company, the Board, a Director, or a Member may be exercised at any time and from time to time.

## **2 Activities of the Company**

---

Any kind of activities which the Constitution authorise the Company to undertake may be undertaken by the Board at any time or times which they think fit or may be left in abeyance, whether that kind of activities has been commenced or not, so long as the Board consider it expedient not to commence or proceed with that kind of activities.

### **3 Membership of the Company**

---

#### **Number of Members**

- 3.1 The number of Members with which the Company was registered is Five (5). Because the Company is technically a public company, it must retain a minimum of 5 Members at all times. There is no limit on the number of Members.

#### **Appointment of Members and Directors**

- 3.2 Additional Members may be appointed from time to time, by a majority of the Members, at either an AGM (Annual General Meeting) or General Meeting. Directors shall also be appointed by a majority of the Members, at either an AGM or General Meeting.

#### **Terms and Conditions of Membership**

- 3.3 The terms and conditions of membership include the Constitution and of the Company.

#### **Resignation of Member**

- 3.4 A Member may by notice in writing to the Company resign membership with immediate effect or with effect from a specified date occurring not more than six months after the service of the notice.

#### **Resignation / Removal of Director**

- 3.5 If a Director, who is also a Member, resigns or is removed from their position as Director prior to the end of their term of office they will be considered to also automatically resign as a Member (but may be re-appointed by the Members under clause 3.2).

#### **Termination of Membership**

- 3.6 If any Member:
- (a) refuses or neglects to comply with the provisions of the Constitution of the Company; or
  - (b) is guilty of any conduct which in the opinion of the majority of Members is unbecoming of a Member or prejudicial to the interests of the Company; the Members may, at a general meeting of Members, expel the Member from the Company.

#### **Notice**

- 3.7 At least one week before the meeting referred to in clause 3.6 is to be held, the Member must be given reasons for his or her expulsion.

#### **Explanation or defence**

- 3.8 The Member must have an opportunity to give an explanation or defence orally or in writing.

#### **Final decision at general meeting**

- 3.9 If at the general meeting, a resolution for the expulsion of the Member is passed by a majority of two-thirds of those Members present and voting, the Member is expelled. The vote must be taken by ballot.

**Other Loss of Membership**

3.10 A Member ceases to be a Member on:

- (a) death;
- (b) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- (c) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (d) if a corporation, being dissolved or otherwise ceasing to exist having a liquidator or provisional liquidator appointed to it, or being unable to pay its debts.

**4 General meetings**

---

**Board's power to convene general meeting**

4.1 The Board may convene a general meeting whenever they think fit.

**Notice of general meeting**

4.2 Ordinarily, each Member must be given:

- (a) not less than 14 days' notice of a general meeting, or
- (b) in the case of a general meeting convened to consider a special resolution, not less than 21 days' notice of the meeting.

With the agreement of 95% of the Members, the required notice period may be waived or shortened.

**Contents of notice**

4.3 A notice convening a meeting of the Company must specify the place, day and hour of the meeting. The notice must include a reasonably prominent statement that:

- (a) a Member entitled to attend and vote is entitled to appoint a proxy; and
- (b) a proxy need not be a Member.

A form of proxy is set out in Annexure 1.

**Auditor's right to attend general meetings**

4.4 The Auditor or an agent authorised by the Auditor in writing for the purpose is entitled to attend any general meeting, to receive all notices of and other communications relating to any general meeting which a Member is entitled to receive and to be heard at any general meeting on any part of the business of the meeting which concerns the Auditor in that capacity, and is entitled to be heard notwithstanding that the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting.

**Cancellation or postponement of general meeting**

4.5 Where a general meeting (including an annual general meeting) is convened by the Board, the Board may, cancel the meeting or postpone the holding of the meeting to

a date and time determined by them. Further provisions on this topic are set out in Annexure 2.

## **5 Proceedings at general meetings including annual general meetings**

### **Business of annual general meeting**

- 5.1 The business of an annual general meeting is to receive and consider the profit and loss account, the balance sheet and the reports of the Board and the Auditor as well as the election and removal of Directors from office in accordance with clause 7.1 below.

### **Special business**

- 5.2 All business other than that referred to in clause 5.1 which is transacted at an annual general meeting and all business transacted at any other general meeting is special business.

### **Quorum**

- 5.3 A majority of Members present in person or by proxy are a quorum at a general meeting and at any adjournment thereof.

### **Quorum continues once present**

- 5.4 An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it, but if a quorum is present at the beginning of a meeting it is to be deemed present throughout the meeting unless the chair of the meeting on the chairman's own motion or at the instance of a Member or proxy of a Member who is present otherwise declares.

### **If quorum not present**

- 5.5 If within 30 minutes after the time appointed for a meeting a quorum is not present, the meeting:
- (a) if convened on requisition of Members under the Corporations Law, is dissolved; and
  - (b) in any other case is adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Board appoint by notice to the Members and others entitled to notice of the meeting.

### **Chair**

- 5.6 The Chair is entitled to preside at general meetings, but if the Chair is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement): the Deputy Chairman, a Member, proxy chosen by a majority of the Members, proxies present.

### **Votes, polls and proxies**

- 5.7 Annexure 2 contains detailed provisions which apply if it is necessary to put any matter to a formal vote.

## 6 Register of Members

---

- 6.1 The Company must keep a register of Members with their addresses in accordance with the Corporations Law. Any Member who at any time changes his or her address must give notice the change in writing to the Secretary.
- 6.2 No person is entitled to exercise the rights or privileges of a Member unless his or her name appears on the register of Members as a Member.

## 7 Board

---

### Composition of Board

- 7.1 The Board consists of 5 or more Directors elected at an annual general meeting, each of whom hold office for three years (unless their term is shorter because of the rotation of directors under clause 8.1 or their appointment to fill a casual vacancy).

**Ordinary members - maximum and minimum numbers. The minimum number of Directors to be elected under clause 7.1(a) is 5 The maximum number of Directors is to be determined by the Company in general meeting. Until otherwise so determined, the maximum is 9.**

### Nominations

- 7.3 A Member may nominate for election as a Director to be elected at the annual general meeting. A Member may nominate whether or not that person has previously held office as a Director.

Nominations must be in writing. They must be signed by the nominee by way of acceptance. They must be lodged with the Secretary at least five days before the general meeting at which the election is to take place.

If there are more nominees than vacancies, the Secretary must prepare ballot lists which contain only the names of the candidates in alphabetical order. Each Member present at the general meeting at which such election is held is entitled to cast primary votes for any number of candidates not exceeding the number of vacancies.

### Ballots

- 7.4 If fewer candidates are nominated under clause 7.3 than there are vacancies, then nomination for those vacancies may be made and accepted orally at the general meeting. If more than the number of vacancies is nominated accepted at the meeting, then a ballot for those vacancies shall be held in respect of the nominations received orally at the meeting. The Ballot must be conducted according to the provisions of this clause.

The elected candidates shall be those receiving the most votes. If two or more candidates receive an equal number of votes, then a second ballot shall be held in respect of those candidates. In the event of an equality of votes on the second ballot, the chair shall have a second or casting vote.

### Power to co-opt/fill casual vacancies

- 7.5 The Directors may appoint, or the Company in general meeting may elect, a person as a Director to fill a casual vacancy, but so that the total number of Directors does not exceed the maximum fixed by or under clause 7.2. Additional Directors not appointed to fill a casual vacancy can only be appointed by the Members. Any Director appointed by the Board to fill a casual vacancy can be removed by the Members in general meeting.

- 7.6 If and so long as the number of Directors is reduced below the minimum fixed by clause 7.2, the continuing Directors may act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or convening a general meeting.

## **8 Rotation of Directors**

---

- 8.1 At the annual general meeting in each year, one third of the Directors in office or, if their number is not a multiple of three, the number nearest to but not less than one third, must retire from office.
- 8.2 A retiring Director may act until the conclusion of the meeting at which the Director retires and is eligible for re-election or re-appointment.
- 8.3 The Directors to retire by rotation at each annual general meeting are those who have been longest in office and the length of time a Director has been in office is to be computed from the Director's last appointment or election.
- 8.4 As between Directors who have been in office an equal length of time, the Directors to retire are to be determined by agreement between them or else by drawing lots in any manner determined by the Chair.

## **9 Vacation of office and conflict of interest**

---

### **Removal from office**

- 9.1 The Company may by ordinary resolution at a general meeting remove any Director from office. Notice of any such resolution must be given to person to be removed prior to the holding of the general meeting. The Board may appoint any eligible person to hold office as a substitute for the person removed until the following annual general meeting.

### **Vacation of office**

- 9.2 The office of a Director is automatically vacated if the Director:
- (a) ceases to be a Director by virtue of, or becomes prohibited from being a Director because of an order made under, the Corporations Law;
  - (b) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the Director's joint or separate estate generally;
  - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
  - (d) resigns office by notice in writing to the Company or refuses to act;
  - (e) is not present personally or by an Alternate Director or by a proxy appointed under clause 11.5 at the meetings of the Board for a continuous period of three months without leave of absence from the Board; or
  - (f) is removed from office by a resolution under section 227 of the Corporations Law.

**Director's interests**

9.3 A Director who has a material personal interest in a matter that is being considered at a meeting of the Board may not:

- (a) vote on the matter (or in relation to a proposed resolution specified in section 232A (3) of the Corporations Law in relation to the matter, whether in relation to that or a different Director); or
- (b) be present while the matter (or a proposed resolution of that kind) is being considered at the meeting.

except in circumstances permitted under the Corporations Law (for example, as specified in section 232A (2), 232A (3), 232A (6) or 232B).

**Permitted activities**

9.4 A Director may, notwithstanding the Director's office and the fiduciary relationship established by it but subject to clauses 20 and 21:

- (a) hold an office or place of profit (except that of Auditor) under the Company or under any body corporate in which the Company is a member or otherwise interested;
- (b) enter into a contract with the Company as vendor, purchaser or otherwise and participate in any association, institution, fund, trust or scheme for past or present employees of the Company or any of its predecessors or their dependants or persons connected with them; and
- (c) retain for the Director's own benefit any profit arising from any such office, place of profit or contract and any pension, allowance or other benefit received because of that participation.

**Contracts not void**

9.5 A contract entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.

**Signing of Contracts**

9.6 An interested person may attest the affixing of the Seal to a contract or any other document.

**Definition of Contract**

9.7 “**Contract**” includes an arrangement and a proposed contract or arrangement.

## 10 Powers of the Board

---

**Management of Company**

10.1 The management of the affairs of the Company is vested in the Board and they may exercise all such powers and do all such things as the Company is by its Constitution or otherwise authorised to exercise and do and are not by this Constitution or by statute required to be exercised or done by the Company in general meeting, subject nevertheless to the provisions of the **Corporations Law** and of the Constitution.

**Finance**

- 10.2 The Board may borrow or raise money for the Company and secure the repayment, satisfaction or performance thereof or of any debts, liabilities, contracts or obligations incurred or undertaken by the Company.

**Regulations**

- 10.3 Subject to the Constitution, the Board may make regulations for the conduct of the business and affairs of the Company.

Any regulations made by the Board are to be notified to the Members within 48 hours of being made.

Without limiting the powers conferred by this clause, the matters upon which the Board may make regulations include:

- (a) the Board's own procedure;
- (b) the appointment of its employees;
- (c) the exercise by the Company of any of its powers;
- (d) the procedure to be followed at meetings of the Board, or a Committee appointed by the Board under clause 12.1, and the appointment, duties and removal of the members of any Committee;
- (e) the regulation, control and management of any property or asset vested in or under the control of the Company, or its employees, officers or representatives; and
- (f) generally, the control, support, management and government of the Company.

Provided, nevertheless that the Directors shall have no power to amend or repeal anything contained in the Constitution of the Company.

Only the Members shall have the power to amend the provisions of the Constitution of the Company or to adopt the amendments as proposed by the Directors of the Company.

The Members may in general meeting rescind or vary any regulations made by the Board under this or any other clause.

## **11 Proceedings of Board**

---

**Meetings**

- 11.1 The Board may meet for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit. Directors may conduct business by written resolutions or telecommunications link - see clauses 11.11 and 11.13.
- 11.2 The frequency of meetings is at the discretion of the Board however at a minimum the Board must meet at least twice per year.



**Quorum**

- 11.3 The quorum necessary for the transaction of the business of the Board is majority of Directors (in person or by proxy) eligible to vote. A Director who is prohibited from being present at part of the meeting under clause 9.3(b) does not form part of the quorum while that prohibition applies (except on a resolution in connection with a general meeting of the Company dealing with a matter in which a Director has a material personal interest).

**Convening meetings**

- 11.4 The Chair may, and the Secretary on the request of two Directors must, convene a meeting of the Board.

**Director Outside Australia**

- 11.5 A Director who is not in Australia is required to be given notice of a meeting of Board.

**Appointment of proxy**

- 11.6 A Director may attend and vote by proxy at a meeting of the Directors if the proxy is a Director and has been appointed by writing under the hand of the appointor or by telegram, facsimile or other form of visible communication from the appointor. Such an appointment may be general or for any particular meeting or meetings.

**Chairman and Deputy Chairman**

- 11.7 The Directors must elect a Chair and may elect a Deputy Chairman and may determine the period during which the Deputy Chairman is to hold office.
- 11.8 The Chairman or Deputy Chairman may be removed by a resolution of the Directors of which not less than 14 days' notice has been given to all the Directors for the time being in Australia.
- 11.9 The Chair is entitled to preside at meetings of the Directors but, if the Chair is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement): the Deputy Chairman, a Director chosen by a majority of the Directors present.

**How questions decided**

- 11.10 Questions arising at a meeting of the Directors are to be decided by a majority of votes and, in the event of an equality of votes the chair of the meeting has a casting vote.

**Written Resolution**

- 11.11 Subject to the **Corporations Law**, a resolution in writing signed by all the Directors who are for the time being in Australia or all the members of a Committee who are for the time being in Australia, in either case being at least a quorum, is as valid and effectual as if it had been passed at a meeting of the Board or Committee duly called and constituted at the time the resolution was last signed.
- 11.12 A written resolution may consist of several documents in like form each signed by one or more of the Directors or members of the Committee.

**Telephone meeting**

- 11.13 For the purposes of this Constitution the contemporaneous linking together by telephone or other means of instantaneous communication (“**telephone**”) of a number of the Directors, being at least a quorum, whether or not any one or more of them is out of Australia, is to be deemed to constitute a meeting of the Board and all the provisions of this Constitution as to meetings of the Board apply to such a meeting if the following conditions are met:
- (a) all the Directors entitled to notice of a meeting of the Board received notice of the meeting and for this purpose notice of the meeting may be given on the telephone;
  - (b) all the Directors wanting to take part in the meeting are linked by telephone for the purposes of the meeting; and
  - (c) at the commencement of the meeting each Director taking part acknowledges the respective Director’s presence for the purposes of the meeting to all other Directors taking part and acknowledges that the Director is able to hear each of the other Directors taking part.

**Presence throughout telephone meeting**

- 11.14 A Director may not leave a telephone meeting by disconnecting the telephone without the consent of the chair of the meeting. A Director is to be deemed to be present and form part of the quorum throughout the meeting unless the Director has obtained the consent of the chair of the meeting to leave the meeting.

**Effect of minute**

- 11.15 A minute of the proceedings at a telephone meeting is sufficient evidence of the proceedings and the observance of all necessary formalities if it is certified as a correct minute by the chair of the meeting.

**Validity of acts of Directors**

- 11.16 All acts of the Board, a Committee or a person acting as a Director or Committee or member of a Committee are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or eligibility of them or any of them or that they or any of them were ineligible or had vacated office.

**12 Committees**

---

- 12.1 The Board may delegate any of their powers to committees consisting of such Director or Directors as they think fit and may revoke the delegation. The Board may also create advisory and specialist committees (whether or not they include non-Directors) to advise the Board on such topics as the Board determines are appropriate
- 12.2 A Committee must conform to any regulations imposed by the Board.
- 12.3 The quorum of meetings of a sub-committee is one-third of its members.
- 12.4 Subject to any such regulations, the meetings and proceedings of a Committee are governed by the provisions of this Constitution as to the meetings and proceedings of the Directors as far as they are applicable.

## 13 Developing Countries Fund

---

### Establishment of the Developing Countries Fund

- 13.1 The Board may establish a Developing Countries Fund under such name as the Board determines for the purpose of assisting, in accordance with the Company's objects, countries certified by the Minister for Foreign Affairs as developing countries.
- 13.2 Any Developing Countries Fund so established, and all contributions made to that fund and all money (including interest) received because of such contributions, must be kept separate from any other funds of the Company in a separate bank account and be accounted for with separate accounting records.

### The Developing Countries Fund Committee

- 13.3 If the Board establishes a Developing Countries Fund, then the Board must establish a Developing Countries Fund Committee, made up by a majority of members who have a degree of responsibility to the general community (as defined in Australian Taxation Ruling Number TR 95/27, while in force), to control that fund.
- 13.4 The Developing Countries Fund Committee must ensure that the public is invited to contribute to the Developing Countries fund.
- 13.5 The Developing Countries Fund Committee may procure the obtaining, collection or receipt by way of contributions, donations, subscriptions, legacies, grants, national appeals, or any other lawful method, gifts of money or property of any description (whether subject to any special trusts or not), for placement into the Developing Countries Fund to be utilised it in accordance with clause 13.1.
- 13.6 The Developing Countries Fund Committee must:
- (a) supervise the receipt of all monies or property received by the Company which is intended for the Developing Countries Fund and shall ensure that official receipts in the name of the fund are issued forthwith in numerical sequence;
  - (b) ensure that such monies or property is deposited without delay to the into the fund and shall satisfy itself that all monies and property received are so lodged; and
  - (c) supervise the payments made from the fund.
- 13.7 The Developing Countries Fund Committee may delegate the day-to-day administration of the Developing Countries Fund but may not delegate be supervisory responsibilities set out in this clause 13.
- 13.8 The Board must notify the Australian Taxation Office in writing of any change to the Constitution affecting the Developing Countries Fund.
- 13.9 All receipts for gifts for the purpose of the Developing Countries Fund must state the name of the Developing Countries Fund, the Australian Business Number applicable to the Developing Countries Fund, and the fact that the receipt is for a gift.

## 14 Minutes

---

- 14.1 The Board must record minutes of all:
- (a) appointments of officers made by the Board;
  - (b) names of Directors present at each meeting of the Board and of any Committee of the Board;
  - (c) resolutions and recommendations at all meetings of the Company and of the Board and of Committee of the Board.

Such minutes shall be recorded in provided for that purpose and must be signed by the chair of the meeting at which the proceedings were held or the chair of the next succeeding meeting.

## 15 Authentication of documents

---

### Company seals

- 15.1 The Board must provide for the safe custody of the Seal in such manner as it thinks fit.

### Use of common seal

- 15.2 The Seal may be affixed to a document only by the authority of the Board or a Committee of the Board authorised by the Directors in that regard.
- 15.3 Every document to which the common seal is affixed must be signed by a Director and countersigned by the Secretary or a second Director or some other person appointed generally or in a particular case by the Board for that purpose.

### Negotiable instruments

- 15.4 Cheques, bills of exchange, promissory notes and other negotiable instruments may be signed, accepted, drawn, made or endorsed on behalf of the Company in such manner and by such persons (whether Directors or officers of the Company or not) as the Directors determine but not otherwise.

## 16 Inspection of books

---

### Powers of Board

- 16.1 Subject to the Corporations Law and any resolution of the Company in general meeting, the Board may determine the time and place at which, and under what conditions, the books of the Company may be inspected by Members and other persons.

### Member's rights of inspection

- 16.2 A Member is entitled to inspect:
- (a) the minutes of proceedings of any general meeting of the Company;
  - (b) the minutes of proceedings of any meeting of the Company; and
  - (c) the annual report prepared by the Auditor;

without charge.

### **Director's rights of inspection**

16.3 A Director is entitled to inspect:

- (a) the documents mentioned in clause 16.2;
- (b) the accounts mentioned in clause 18.1; and
- (c) the books of the Company;

without charge, at all reasonable times.

### **Limitation**

16.5 Aside from clause 16.2 and 16.3, a Member or other person, has no right to inspect any of the books or documents of the Company except as conferred by:

- (a) this Constitution,
- (b) the Corporations Law or other statute;
- (c) a resolution of the Board; or
- (d) a resolution of the Company in general meeting.

### **Definition**

16.5 In this clause 16, "books" has the extended meaning contained in section 9(1) of the Corporations Law.

## **17 Service of documents**

---

### **Service by Company**

17.1 A notice or other document may be delivered or served by the Company either personally or by sending it:

- (a) in the case of a Member who does not have a registered address in Australia, by airmail post; and
- (b) in any other case, by ordinary post,

and is at the risk of the addressee as soon as it is given or posted.

### **Member outside Australia**

17.2 A Member whose registered address is not in Australia may specify in writing an address in Australia to be deemed the Member's registered address within the meaning of clause 17.

### **Service by post-deemed delivery**

17.3 A document sent by post is to be deemed received or served on the day next following that on which it was posted where the document is sent within Australia and 10 days following the date on which it is posted for documents sent outside Australia and in proving delivery or service it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped and was posted.

**Evidence**

- 17.4 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was properly addressed and stamped and was posted is conclusive evidence of those facts.

**Service by fax**

- 17.5 A notice may be served by the Company on a Member or other person receiving notice under this Constitution by sending it by facsimile to that person at the person's registered address. A notice so sent is to be deemed served on the day following production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the person's facsimile number.

**Service by email**

- 17.6 A notice may be served by the Company on a Member or Director or other person receiving notice under this Constitution by sending an email to the email address provided to the Company for this purpose. An e-mail message shall be deemed to be received once a response from the recipient is received by the sender confirming receipt of the notice by email. An automatic reply shall not be deemed as a response to an e-mail message. In the event of notice by email the original notice and related documents are to be tabled at the meeting.

**Fine Print**

- 17.7 Subject to the **Corporations Law**:

- (a) if a given number of days' notice or notice extending over any other period is required to be given, the day on which the notice is to be deemed served and in case of a notice convening a meeting the day on which the meeting is to be held are to be excluded in calculating the number of days or other period;
- (b) if this Constitution requires or permit a notice to be given by the Company, the Board, a Director or the Secretary, neither accidental omission to give the notice nor non-receipt of the notice invalidates the meeting, resolution, procedure or matter to which the notice relates;
- (c) the signature to a written notice need not be handwritten; and
- (d) all summonses, notices, process, judgments and orders in relation to any legal proceedings by the Company or its liquidator against a Member not in Victoria may be served by certified or registered post (the foregoing provisions as to notices applying with necessary changes) and that service is to be deemed personal service.

**18 Accounts****Accounts required**

- 18.1 The Board must cause proper accounts to be kept with respect to: -
- (a) all sums of money received and expended by the Company and all matters in respect of which the receipt and expenditure takes place;
  - (b) all sales and purchases by the Company; and

(c) the assets and liabilities of the Company.

18.2 The board must keep separate accounts in relation to a Developing Countries Fund if such a fund is established.

#### **Location and inspection of accounts**

18.3 The accounts must be kept at the Registered Office or at such other place or places as the Board thinks fit. The accounts must be open to the inspection of the Board and a Director at all reasonable times.

#### **Annual general meeting**

18.4 At the annual general meeting in every year, the Board must lay before the Company

- (a) a general report of the activities of the Company;
- (b) a statement of the income and expenditure and the funds and liabilities of the Company made up to a date not more than 5 months before the meeting, and from the time when the last preceding statement and balance sheet were made; and
- (c) any other reports and statements required by the Corporations Law.

#### **Notice to members**

18.5 A copy of the reports and statements set out in clause 18.4 (including every document required by law to be annexed or attached to them) must be forwarded to each Member at least 14 days before the date of the annual general meeting.

## **19 Audit**

---

Properly qualified auditors must be appointed and their duties regulated in accordance with the provisions of the Corporations Law.

## **20 Non-profit company- application of Company property**

---

The income and property of the Company including that in the Developing Countries Fund, however derived, must be applied solely for the promotion of the objects of the Company as set out in this Constitution. The income and property of the Company must not be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to the Members or any of them.

## **21 Remuneration and expenses**

---

#### **Certain payments allowed**

21.1 Notwithstanding clause 20, the Company may make the following payments:

- (a) reasonable remuneration to its officers, servants, and any member of the Company in return for administrative services actually rendered to the Company or for goods supplied in the ordinary and usual course of business where the payments do not exceed an amount previously approved by the Board;

- (b) interest on money borrowed from any Member of the Company. The interest rate paid must not exceed the lowest rate paid for the time being by the Commonwealth Bank of Australia in respect of term deposits;
- (c) reasonable rent for premises leased by any member to the Company where the payments do not exceed an amount previously approved by the Board.

#### **Payments to Directors in salaried office**

- 21.2 A Director may not be paid any remuneration for services as a Director, but a Director appointed to any other salaried office of the Company may be paid remuneration where the payments do not exceed an amount previously approved by the Board.

#### **Other payments to Directors**

- 21.3 No other remuneration or other benefit in money or money's worth may be paid or given by the Company to any Director, other than the:
- (a) reimbursement of out-of-pocket expenses where the payments do not exceed an amount previously approved by the Board;
  - (b) payment of interest at the rate stated in clause 21.1(b) on money lent to the Company; or
  - (c) payment of reasonable rent for premises leased to the Company where the payments do not exceed an amount previously approved by the Board.

## **22 Indemnity**

---

#### **Indemnity of officers, Auditors and agents**

- 22.1 Every officer (as defined in the Corporations Law), Auditor and agent of the Company is indemnified (to the maximum extent permitted by law) out of the property of the Company against any liabilities or expenses incurred by that person:
- (a) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted, or which are withdrawn before judgment; or
  - (b) in connection with any administrative proceedings relating to that person's position with the Company, except proceedings which give rise to civil or criminal proceedings against that person in which judgment is not given in that person's favour or in which that person is not acquitted; or
  - (c) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted to that person under the **Corporations Law** by the court.

## **23 Winding up**

---

#### **Surplus from the Developing Countries Fund**

- 23.1 At the first occurrence of the winding up of the Developing Countries Fund or the Company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act 1997 in respect of the Developing Countries



Fund , there remains surplus assets in the Developing Countries Fund, the same shall not be paid to or distributed among the members of the Company, but shall be given to or transferred to a fund, authority or institution having objects similar to the objects of the company and which is charitable at law and gifts to which can be deducted under Division 30 of the Income Tax Assessment Act 1997.

**Other Property of the Company**

23.2 If, after the winding up of the Company and satisfaction of all its debts and liabilities, any property other than property in the Developing Countries Fund remains, it must not be paid to or distributed amongst the members of the Company. Instead, it must be given to one or more charitable institution(s) which satisfy all the following:

- (a) objects of the institution(s) are similar to the objects of the Company;
- (b) the Constitution of the institution(s) prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is the restriction imposed under the Constitution of the Company.

The institution(s) are to be determined by the members of the Company at or before the time of winding up. If no determination is made by the members of the Company, the determination must be made by a judge of the Supreme Court of Victoria.

## **Annexure 1 - Cancellation or postponement of general meeting**

---

### **Cancellation or postponement of general meeting**

When a general meeting (including an annual general meeting) is convened by the Board, the Board may, cancel the meeting or postpone the holding of the meeting to a date and time determined by them

The following provisions apply in that case:

- 23.3 Written notice of cancellation or postponement of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company at least three days before the date for which the meeting is convened and must specify the reason for cancellation or postponement. A failure to comply with this clause does not invalidate the cancellation or postponement.

### **Contents of notice**

- 23.4 A notice postponing the holding of a general meeting must specify:
- (a) a date and time for the holding of the meeting; and
  - (b) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting.

### **Timing of postponed meeting**

- 23.5 The number of days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the meeting may not be less than the number of days' notice of the meeting required under clause 4.2

### **Business at postponed meeting**

- 23.6 The only business that may be transacted at a general meeting which is postponed is the business specified in the notice convening the meeting.

### **Failure to comply with notice**

- 23.7 The accidental omission to give notice of the cancellation or postponement of a meeting to, or the non-receipt of any such notice by, any person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.

### **Extension of proxy**

- 23.8 If:
- (a) by the terms of an instrument appointing a Proxy, a Proxy is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
  - (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of Proxy,
- then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of Proxy, unless the Member appointing the Proxy, gives to the Company, at its Registered Office (marked to the attention of the secretary) notice in writing to the contrary, at least 48 hours before the time to which the holding of the meeting has been postponed.

**When cancellation/postponement not permitted**

23.9 Clauses 23.4 to 23.8 do not apply to a general meeting convened by the Board in accordance with a requisition of Members under the Corporations Law.

## Annexure 2 - Voting, polls and proxies

### 24 Proceedings at general meetings including annual general meetings

#### Casting vote

- 24.1 If there is an equality of votes, whether on a show of hands or on a poll, the chair of the meeting is entitled to a casting vote in addition to any votes to which the chair is entitled as a Member or Proxy of a Member. The chairman has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

#### How questions decided

- 24.2 Every question submitted to a meeting is to be decided by a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded by:
- (a) the chair of the meeting;
  - (b) not less than two Members present in person or by proxy and having the right to vote at the meeting; or
  - (c) a Member or Members so present representing not less than 10% of the total voting rights of all the Members having the right to vote at the meeting,
- and the demand for the poll is not withdrawn.

#### Effect of declaration of result

- 24.3 Unless a poll is so demanded and the demand is not withdrawn, a declaration by the chair of the meeting that the motion has been carried or carried unanimously or without dissent or by a particular majority or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of that and it is not necessary to prove the number or proportion of votes cast in favour of or against the motion.

#### Poll - general

- 24.4 If a poll is so demanded and the demand is not withdrawn, it must be taken in such manner and at such time and place and at once or after an interval or adjournment or otherwise as the chair of the meeting then or subsequently determines. The result of the poll is the resolution of the meeting at which the poll was demanded.

#### Certain polls to be held immediately

- 24.5 A poll may not be demanded on the election of a chair of a meeting and a poll demanded on a question of adjournment is to be taken at the meeting and without adjournment.

#### Meeting can continue on other business

- 24.6 A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### Objection to voting qualification

- 24.7 Objection may not be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll except at that meeting or adjourned meeting or when that poll is taken, and every vote not disallowed at the meeting or adjourned meeting or when the poll is taken is valid.

**Ruling on disputed vote**

24.8 If there is a dispute as to the admission or rejection of a vote, the chair of the meeting must decide it and the chairman's decision made in good faith is final and conclusive.

**Adjournment**

24.9 The chair of a meeting may with the consent of the meeting adjourn the meeting from time to time and place to place. The only business that may be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place. A resolution passed at an adjourned meeting is passed on that date and not any earlier day.

**Fresh notice of adjourned meeting**

24.10 If a meeting is adjourned for more than 14 days, notice of the adjournment must be given in accordance with clause 4.3.

**25 Votes of Members**

---

**Voting rights**

25.1 Subject to the rights and any restrictions attached to or affecting Members and to any other restrictions in this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as Proxy has one vote; and
- (b) on a poll, each Member present in person has one vote and each person present as Proxy has one vote for each Member that the person represents.

**Right to appoint proxy**

25.2 A Member entitled to attend at a meeting of the Company is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting and a proxy has the same right as the Member to speak and vote at the meeting.

**Instrument of proxy**

25.3 An instrument appointing a proxy must be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing or if the appointor is a body corporate under its common or official seal or the hand of its attorney so authorised and, if and to the extent that the Board permits, may be in respect of more than one meeting.

**Example**

25.4 An instrument appointing a proxy must be in the following form or a form as near hereto as circumstances permit:-

**MSI Asia Pacific**

I, \_\_\_\_\_ of \_\_\_\_\_ being a member of MSI Asia Pacific hereby appoint \_\_\_\_\_ of \_\_\_\_\_ or failing her/him \_\_\_\_\_ as my proxy to vote for me on my behalf at the general meeting of the Company, to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ and at any adjournment thereof.

My proxy is hereby authorised to vote \*in favour of/\* against the following resolutions:

Signed this            day of            20

.....

**Note 1. In the event of the member desiring to vote for or against any resolution he or she shall instruct his or her proxy accordingly. Unless otherwise instructed, the proxy may vote as she/he thinks fit.**

**\* Strike out whichever is not desired.**

**Right to appoint attorney**

25.5 A Member may by power of attorney duly executed in the presence of at least one witness and (if necessary) duly stamped, appoint an attorney to act on the Member's behalf at all or any meetings of the Company.

**Receipt of proxy and other instruments**

25.6 To be effective, an instrument appointing a proxy and any power of attorney under which it is executed or a copy (verified by statutory declaration as a true copy) of the power of attorney, or an instrument appointing an attorney under clause 6.5, in either case together with any evidence of due stamping (if necessary) and execution and non-revocation of the power of attorney which the Directors require, must be received by the Company at the Registered Office or at any other place which is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time appointed for the meeting or adjourned or postponed meeting or poll which the appointee proposes to attend or on which the appointee proposes to vote.

**Validity of vote in certain circumstances**

25.7 A vote cast by a proxy is valid notwithstanding the previous revocation of that person's authority by the death of the principal or otherwise, unless an intimation in writing of the revocation has been received at the Registered Office or by the chair of the meeting before the vote is cast.