

MIT GROUP FOUNDATION LTD
ACN 603 112 812

CONSTITUTION

CORPORATIONS ACT 2001

CONSTITUTION OF

MIT GROUP FOUNDATION LTD. (ACN 603 112 812)

A COMPANY LIMITED BY GUARANTEE

1. **Name.** The name of the company is MIT Group Foundation Ltd.
2. **Company.** MIT Group Foundation is a company limited by guarantee.
3. **Legal capacity and powers.** MIT Group Foundation:
 - (a) has the legal capacity and, subject to the provisions of the Act, all the rights, powers and privileges of a natural person;
 - (b) does not have the power to issue shares.
4. **Objects.** The objects of MIT Group Foundation are the provision of the relief of poverty and distress of the poor and destitute in developing countries through the provision of
 - (a) building new schools;
 - (b) providing funds for educational materials;
 - (c) providing funds for teacher training;
 - (d) providing funds for student scholarships;
 - (e) providing vocational training for students;
 - (f) providing other infrastructure;
 - (g) building hospitals and/or medical centres;
 - (h) providing operating capital for hospitals and/or medical centres to purchase medical equipment and supplies, and funds to pay for medical staff and ancillary staff;
 - (i) providing funds for residential housing;
 - (j) providing funds to purchase food and water;
 - (k) providing funds to purchase clothing --
 in those countries, and to do all things as may be appropriate or necessary to promote these objects, including:
 - (1) inviting financial contributions from the public to the MIT Group Foundation Overseas Gift Fund;
 - (2) carrying out its programs in partnership with local NGOs in accordance with the guidelines published by the Department;
 - (3) adhering to, and carrying out its programs in accordance with, the ACFID Code of Conduct —
 and MIT Group Foundation shall be organised and operated exclusively for the attainment of, and holds its assets and income on trust exclusively for, these objects.
5. **Liability of members.** The liability of the members is limited to the respective amounts that the members undertake under clause 266 to contribute to the property of MIT Group Foundation if it is wound up.
6. **Definitions.** In this Constitution:

“**ACFID**” means the Australian Council for International Development;

“**Act**” means the *Corporations Act 2001*;

“**approved auditor**” means a person registered, or taken to be registered, as an auditor under Part 9.2 of the *Corporations Act 2001*;

“**auditor**” means an auditor able to consent to be appointed as auditor;

“**Board**” means the Board of Directors;

“**charitable**” means exclusively charitable according to the law of Australia;

“**charitable institution**” means a corporation or body of persons associated for charitable

purposes;

“charitable trust” has the same meaning as that expression is defined in section 7J of the *Charities Act 1978* (Vic);

“charity” means charitable according to the law of Australia;

“clause” means a clause of this Constitution;

“Code of Conduct” means the ACFID Code of Conduct;

“Commissioner of Taxation” means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the *Income Tax Assessment Act 1997*;

“Constitution” means this Constitution as amended;

“deductible gift recipient” means an entity which is a deductible gift recipient under the *Income Tax Assessment Act 1997*;

“Department” means the Department of Foreign Affairs and Trade;

“developing countries” means those foreign states which are declared by the Minister for Foreign Affairs and Trade to be developing countries;

“financial year” means the year ending on 30th June;

“Fund” means the gift fund established by MIT Group Foundation under clause 222;

“Fund Committee” means the committee referred to in clause 222A;

“Fund Committee Member” means the a member of the Fund Committee;

“General Meeting” includes, where the context permits, an Annual General Meeting, an Extraordinary General Meeting and a Special General Meeting;

“local NGO” means a charitable NGO in the country in which MIT Group Foundation is carrying out its program;

“member” means, if subscriptions and contributions are payable by members, a financial member;

“Member of the Board” means a director of MIT Group Foundation;

“MIT Group Foundation” means MIT Group Foundation Ltd;

“MIT Group Foundation Overseas Gift Fund” means the gift fund of that name established by MIT Group Foundation under clause 222;

“month” means calendar month;

“NGO” means a non-government organisation;

“programs” means overseas programs for the relief of poverty in developing countries;

“Register of Members” includes the principal register and, if applicable, any branch register;

“resolution” means a resolution other than a special resolution;

“seal” means the common seal of MIT Group Foundation and includes any official seal of MIT Group Foundation;

“Secretary” means any person appointed to perform the duties of Secretary of MIT Group Foundation, and includes an Honorary Secretary;

“special resolution” means a resolution:

- (a) of which notice has been given; and
- (b) that has been passed by at least 75% of the members who are entitled to vote on the resolution;

“writing” means written or produced by any substitute for writing or partly written and partly so produced;

Unless otherwise stated, **“year”** means a financial year.

- 7. The headings are inserted for convenience only and do not form part of this Constitution and do not affect its construction or interpretation.
- 8. Unless the context or subject matter is inconsistent, words importing persons include corporations and words importing the masculine include the feminine.
- 9. Unless the contrary intention appears, an expression, has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning in that provision of the Act.

MEMBERS

- 10. **Register of members.** MIT Group Foundation must keep a Register of Members.
- 11. Persons may be admitted from time to time as members.
- 12. **Application for membership.** Applications for membership shall be determined by the Board, which has an absolute discretion as to whether or not to admit any applicant as a member.
- 13. In the event of rejection of the application, all fees paid by the applicant shall be refunded in full.
- 14. The election or transfer of any member or other person admitted shall not become effective until the appropriate fees and subscriptions payable on such election or transfer have been paid, and if such fees or subscriptions shall remain unpaid at the end of 60 days after the date when they respectively had become payable, the election or transfer shall be revoked.
- 15. **Membership not transferable.** The rights and privileges of any member shall be personal to the member and are not transferable.
- 16. **Subscriptions.** Subject to any resolution of a General Meeting, the Board may determine the subscriptions which are payable by each category of membership.
- 17. Any member whose subscription remains unpaid at 30 September after due notice has been sent to the member’s address, as shown in the Register of Members, shall be automatically removed from the Register of Members.
- 18. **Contributions.** The Board shall determine the contributions which are payable by each class of member.
- 19. Annual contributions must be paid by members not later than eight weeks after the end of the financial year for which they are due.
- 20. If any member fails to pay the appropriate contribution for twelve months after it has fallen due, then the Board has the right to cancel his, her or its membership without prejudice to the member’s right to apply for re-admission.
- 21. **Entitlement to re-admission if subscriptions paid.** A person whose name has been removed from the Register of Members for failure to pay the subscriptions is entitled to re-admission if the person pays to the Board any unpaid subscriptions together with any applicable late payment fee.
- 22. The entitlement to re-admission is an entitlement to membership on the same terms and subject to the same conditions (if any) as applied to the person’s membership immediately before the removal of the member’s name from the Register of Members.
- 23. An entitlement to re-admission under clause 21 does not override any other provision of this Constitution pursuant to which a person’s name is authorised, directed or required to be removed from the Register of Members.
- 24. **Board may waive membership fee.** The Board may, for such reason as it considers proper, waive:
 - (a) the requirement that a subscription be paid by a member in any particular year;
 - (b) payment of a late payment fee in a particular case.
- 25. **Removal on death or at own request.** The Board must remove the name of a member from the Register of Members if the member has died or, in the case of a corporation, been dissolved.

26. Any member may discontinue being a member upon delivering to the Secretary notice thereof in writing of the member's intention so to do.
27. The member must pay all fees, subscriptions and any other monies due by the member to MIT Group Foundation up to the date of such notice, upon which the member ceases to be a member.

EXPULSION, SUSPENSION AND RESIGNATION

28. **Complaint.** If any member is alleged:
 - (a) to have wilfully acted in breach of this Constitution;
 - (b) to have engaged in conduct as shall have rendered him, her or it unfit to continue to be a member;
 - (c) to have engaged in conduct which was such as to be injurious to MIT Group Foundation or its objectives —
 then the Board may consider the complaint.
29. **Who can make a complaint?** Any person (including the Board) can make a complaint.
30. **Complaints to be in writing, etc.** A complaint (except one made by the Board or the Secretary) must be in writing and contain particulars of the allegations on which it is founded.
31. The Board may consider and investigate a complaint even if it does not comply with these requirements but must not refer the complaint to a committee until they are complied with.
32. **Where to lodge complaints.** A complaint made to the Board is to be lodged with the Secretary.
33. **Further particulars may be required from complainant.** The Board may require the complainant to provide further particulars of a complaint.
34. **Committee.** If, in the opinion of the Board, it is expedient to appoint a committee of the Board to make, or assist in making, an investigation into the complaint, it shall appoint a committee accordingly, and shall cause such committee to report to the Board, and the Board may adopt or reject that report, either wholly or in part.
35. **Courses of action available to the Board on a complaint.** The Board may:
 - (a) dismiss the complaint;
 - (b) determine that no further action should be taken in respect of the complaint.
36. If the Board does not:
 - (a) dismiss the complaint;
 - (b) determine that no further action should be taken in respect of the complaint —
 then written notice of the making of a complaint, the nature of the complaint and the identity of the complainant is to be given to the member against whom the complaint is made.
37. The notice must be sent by certified mail to the member's address as shown on the Register of Members.
38. The Board is to fix a time and place for the hearing and is to give not less than 14 days' notice of the hearing to:
 - (a) the member concerned;
 - (b) the complainant, if any.
39. The member must be given an opportunity of attending before the Board to defend himself, herself or itself and to meet any of the allegations made in the complaint.
40. On the hearing on a complaint, the Board may make a finding against a member if:
 - (a) a majority of the Board are of that opinion; or
 - (b) the member who is the subject of the complaint admits to it to the Board.
41. **Powers of Board.** The Board may:
 - (a) dismiss the complaint;
 - (b) take no action;
 - (c) caution or reprimand the member;
 - (d) expel the member;
 - (e) suspend the member for a fixed period of time.
42. **Member to be notified of decision.** The Secretary shall inform the member of the decision of the Board.
43. **Appeal.** Any person affected may appeal against a decision by the Board, and the appeal must be dealt with at the next General Meeting thereafter at which:
 - (a) the member concerned has the right to address the General Meeting; and
 - (b) the question is to be decided by a simple majority.

GENERAL MEETINGS

WHO MAY CALL GENERAL MEETINGS?

44. **General Meetings.** General Meetings shall be held each year and at such time and place as the Board may determine.
45. **Calling of General Meeting.** The President or two Members of the Board may call a General Meeting.
46. **Annual General Meeting.** An Annual General Meeting must be held at least once in each calendar year and within 5 months after the end of its financial year.
47. An Annual General Meeting is to be held in addition to any other meetings held in the year.
48. **Special General Meetings.** The Secretary must call and arrange to hold a Special General Meeting whenever required by the Board to be held at such time and place as the Board may determine.
49. **Calling of Special General Meeting when requested by members.** The Secretary must call and arrange to hold a Special General Meeting whenever required by the Board or on the request by not less than 3 members to be held at such time and place as the Board may determine.
50. The request must:
 - (a) be in writing;
 - (b) state any resolution to be proposed at the General Meeting;
 - (c) be signed by the members making the request; and
 - (d) be given to MIT Group Foundation.
51. Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
52. The Secretary must call the General Meeting within 14 days after the request is given to MIT Group Foundation. The General Meeting is to be held not later than 2 months after the request is given to MIT Group Foundation.

HOW TO CALL GENERAL MEETING

53. **Amount of notice of General Meetings.** At least:
 - (a) 28 days notice must be given of a General Meeting at which any election of Members of the Board or other officers is to be held;
 - (b) 21 days notice must be given of any other General Meeting.
54. **Calling General Meetings on shorter notice.** Subject to clause 55, MIT Group Foundation may call on shorter notice:
 - (a) an Annual General Meeting, if all the members entitled to attend and vote at the Annual General Meeting agree beforehand; and
 - (b) any other General Meeting, if at least 95% of the members who are entitled to vote on the resolution agree beforehand.
55. **Circumstances in which shorter notice not allowed.** At least 21 days notice must be given of a General Meeting at which a resolution will be moved to:
 - (a) remove an auditor;
 - (b) remove a Member of the Board; or
 - (c) appoint a Member of the Board in place of a Member of the Board removed; or
 - (d) to appoint or reappoint as a Member of the Board a person who has attained the age of 72 years.
56. **Who must receive notice?** Notice of every General Meeting must be given to every member except those members who have not supplied to MIT Group Foundation an address for the giving of notices to them.
57. **Auditor entitled to notice and other communications.** MIT Group Foundation must give its auditor (if any):
 - (a) notice of a General Meeting in the same way that a member is entitled to receive notice; and
 - (b) any other communications relating to the General Meeting that a member is entitled to receive.
58. No other person shall be entitled to receive notices of General Meetings.
59. **Contents of notice of General Meetings.** A notice of a General Meeting must:

- (a) set out the place, date and time for the General Meeting (and, if the General Meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) state the general nature of the business of the General Meeting;
 - (c) if a special resolution is to be proposed at the General Meeting, set out an intention to propose the special resolution and state the resolution; and
 - (d) if a member is entitled to appoint a proxy, contain a statement setting out the following information:
 - (1) that the member has a right to appoint a proxy;
 - (2) whether or not the proxy needs to be a member.
60. **How notice is given.** MIT Group Foundation may give the notice of General Meeting to a member:
- (a) personally;
 - (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member;
 - (c) by sending it to the fax number or e-mail address (if any) nominated by the member; or
 - (d) by any other means that this Constitution permits.
61. Notice of every General Meeting shall be given in any manner authorised by clause 269 to:
- (a) every member except those members who have not supplied to MIT Group Foundation an address for the giving of notices to them; and
 - (b) the auditor or auditors for the time being of MIT Group Foundation.
62. **Validity of General Meeting.** The accidental omission to give notice of a General Meeting to, or the non-receipt of notice of the General Meeting by, any person entitled to receive notice shall not invalidate proceedings of that General Meeting.

MEMBERS' RIGHTS TO PUT RESOLUTIONS ETC AT GENERAL MEETINGS

63. **Members' resolutions.** The following members may give notice of a resolution that they propose to move at a General Meeting:
- (a) at least 5% of the members who are entitled to vote on the resolution; or
 - (b) at least 5 members who are entitled to vote at a General Meeting.
64. The notice must:
- (a) be in writing;
 - (b) set out the wording of the proposed resolution; and
 - (c) be signed by the members proposing to move the resolution.
65. Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
66. **Notice of members' resolutions.** If MIT Group Foundation has been given notice of a resolution under clause 63, the resolution is to be considered at the next General Meeting that occurs more than 2 months after the notice is given.
67. MIT Group Foundation must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a General Meeting.
68. MIT Group Foundation is responsible for the cost of giving members notice of the resolution if MIT Group Foundation receives the notice in time to send it out to members with the notice of General Meeting.
69. The members requesting the General Meeting are jointly and individually liable for the expenses reasonably incurred by MIT Group Foundation in giving members notice of the resolution if MIT Group Foundation does not receive the members' notice in time to send it out with the notice of General Meeting. At a General Meeting, MIT Group Foundation may resolve to meet the expenses itself.
70. MIT Group Foundation need not give notice of the resolution:
- (a) if it is more than 1,000 words long or defamatory; or
 - (b) if the members making the request are to bear the expenses of sending the notice out, unless the members give MIT Group Foundation a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.
71. **Members' statements to be distributed.** Members may request MIT Group Foundation to give to all its members a statement provided by the members making the request about:
- (a) a resolution that is proposed to be moved at a General Meeting; or
 - (b) any other matter that may be properly considered at a General Meeting.
72. The request must be made by members with at least:
- (a) 5% of the members who are entitled to vote on the resolution; or
 - (b) 100 members who are entitled to vote at the General Meeting.
73. The request must be:

- (a) in writing;
 - (b) signed by the members making the request; and
 - (c) given to MIT Group Foundation.
74. Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
75. After receiving the request, MIT Group Foundation must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a General Meeting.
76. MIT Group Foundation is responsible for the cost of making the distribution if MIT Group Foundation receives the statement in time to send it out to members with the notice of General Meeting.
77. The members making the request are jointly and individually liable for the expenses reasonably incurred by MIT Group Foundation in making the distribution if MIT Group Foundation does not receive the statement in time to send it out with the notice of General Meeting. At a General Meeting, MIT Group Foundation may resolve to meet the expenses itself.
78. MIT Group Foundation need not comply with the request:
- (a) if the statement is more than 1,000 words long or defamatory; or
 - (b) if the members making the request are responsible for the expenses of the distribution, unless the members give MIT Group Foundation a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

HOLDING GENERAL MEETING

79. **Time and place for General Meetings.** A General Meeting must be held at a reasonable time and place and at different venues.
80. **Virtual meeting of members.** A General Meeting may be held at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate. The following procedures apply to calling a virtual General Meeting:
- (a) the contemporaneous linking together by an instantaneous communication device of a number of members not less than the quorum, whether or not any one or more of the members is out of Australia, shall be deemed to constitute a General Meeting and all the provisions of this Constitution as to General Meetings shall apply to any such meeting held by an instantaneous communication device so long as the following conditions are met:
 - (i) all the members for the time being entitled to receive notice of the meeting of the General Meeting shall be entitled to notice of a General Meeting held by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting;
 - (ii) notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by this Constitution; and
 - (iii) each of the members taking part in the meeting by an instantaneous communication device must be able to hear each other taking part at the commencement of the meeting.
 - (b) A minute of the proceedings at meetings held by an instantaneous communication device shall be sufficient evidence of such proceeding and of the observance of all necessary formalities if certified as a correct minute by the President of the meeting.
- For the purpose of this clause, "instantaneous communication device" includes telephone, television or any other audio and/or visual device which permits instantaneous communication.
81. **Attendance.** Members shall be entitled to be present at General Meetings.
82. **Quorum.** The quorum for a General Meeting is 5 members and the quorum must be present at all times during the General Meeting.
83. In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than one proxy or representative, count only one of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.
84. A General Meeting that does not have a quorum present within 30 minutes after the time for the General Meeting set out in the notice of General Meeting is:
- (a) if the General Meeting was convened upon the requisition of members, dissolved;
 - (b) in any other case, adjourned to the date, time and place the Members of the Board specify.
85. If no quorum is present at the resumed General Meeting within 30 minutes after the time for the General Meeting, the members present constitute a quorum and may transact the business for

- which the General Meeting was called.
86. **Chairing General Meetings.** The President or, in the President's absence, a Vice-President, or in the absence of both of them, a chair appointed by the Board, shall preside at every General Meeting.
87. If none of them are present within 10 minutes after the time appointed for the holding of the General Meeting none of them are present, the members present shall elect one of their number to be chair of the General Meeting may elect its own chair.
88. **Business of Annual General Meeting.** The business of an Annual General Meeting may include any of the following:
- (1) to read and confirm the minutes of the last Annual Meeting and any Special General Meeting since;
 - (2) the consideration of the annual financial report, the Board's report and auditor's report;
 - (3) the election of Members of the Board;
 - (4) the appointment of the auditor;
 - (5) the fixing of the auditor's remuneration;
 - (6) to deal with notices of motion;
 - (7) to deal with special business;
 - (8) to transact any such other business as shall be brought forward.
89. The Board must lay before the Annual General Meeting:
- (1) the financial report; and
 - (2) the Board's report; and
 - (3) the auditor's report —
- for the last financial year that ended before the Annual General Meeting.
90. **Questions and comments by members at Annual General Meeting.** The chair of an Annual General Meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of MIT Group Foundation.
91. **Questions by members of auditors at Annual General Meeting.** If the auditor or their representative is at the meeting, the chair of an Annual General Meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.
92. **Auditor's right to be heard at General Meetings.** The auditor is entitled to attend any General Meeting.
93. The auditor is entitled to be heard at the General Meeting on any part of the business of the General Meeting that concerns the auditor in their capacity as auditor.
94. The auditor is entitled to be heard even if:
- (a) the auditor retires at the General Meeting; or
 - (b) the General Meeting passes a resolution to remove the auditor from office.
95. The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any General Meeting.
96. **Adjournment.** The chair may adjourn the meeting from time to time but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
97. **Notice of adjourned General Meetings.** When a General Meeting is adjourned, new notice of the resumed General Meeting must be given if the General Meeting is adjourned for one month or more.
98. Except as provided by clause 97, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned General Meeting.
99. **Business at adjourned meetings.** Only unfinished business is to be transacted at a meeting resumed after an adjournment.
100. A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

MEMBERS' REPRESENTATIVES

101. **Who can appoint a proxy?** A member who is entitled to attend and cast a vote at a General Meeting may appoint a person as the member's proxy to attend and vote for the member (if the member is entitled to vote) at the General Meeting.
102. **Rights of proxies.** A proxy appointed to attend and vote for a member has the same rights as the member:
- (a) to speak at the General Meeting;
 - (b) to vote (but only to the extent allowed by the appointment); and

- (c) to join in a demand for a poll.
103. **Effect of member's presence on proxy's authority.** A proxy's authority to speak and vote for a member at a General Meeting is suspended while the member is present at the General Meeting.
104. **Sending appointment forms or lists of proxies must send to all members.** If MIT Group Foundation sends a member a proxy appointment form for a General Meeting or a list of persons willing to act as proxies at a General Meeting:
- (a) if the member requested the form or list, MIT Group Foundation must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the General Meeting; or
 - (b) otherwise, MIT Group Foundation must send the form or list to all its members entitled to appoint a proxy to attend and vote at the General Meeting.
105. **Appointing a proxy.** An appointment of a proxy is valid if it is signed by the member making the appointment and contains the following information:
- (1) the member's name and address;
 - (2) the name of MIT Group Foundation;
 - (3) the proxy's name or the name of the office held by the proxy;
 - (4) the General Meetings at which the appointment may be used.
106. An instrument appointing a proxy may be in the following form or in or in a form that is as similar as the circumstances allow:

APPOINTMENT OF PROXY

To: The Secretary
MIT Group Foundation

I, _____ of _____, being a member of MIT Group Foundation, hereby appoint [name] of [address] or, in his/her absence, [name] of [address], if no person is named, the chairman of the meeting, as my/our proxy to vote for me on my behalf at the *AGM *Extraordinary General Meeting *Special General Meeting of MIT Group Foundation to be held on [date] and at any adjournment of that meeting.

If there is only one resolution, this form is to be used *in favour of *against the resolution [*strike out whichever is not desired*].

If there is more than one resolution, identify the resolution:

1. [*insert resolution*]
For []
Against []
[Place a mark in the appropriate box]

2. [*insert resolution*]
For []
Against []
[Place a mark in the appropriate box]

[Should the member not wish to direct the proxy how to vote, the proxy may vote or abstain from voting as the proxy thinks fit]

Dated: [date]

Signed: [signature]

*Strike out whichever is not desired. To be inserted if desired.

107. An appointment may be a standing one.
108. An appointment is valid even if it contains only some of the information required by clause 105.
109. An appointment does not have to be witnessed.
110. An undated appointment is taken to have been dated on the day it is given to MIT Group Foundation.
111. An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (b) if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
 - (c) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
 - (d) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
112. If a proxy is also a member, clause 111 does not affect the way that the person can cast any votes they hold as a member.
113. A later appointment revokes an earlier one if both appointments could not be validly exercised at the General Meeting.
114. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no notice in writing of such death, insanity or revocation as aforesaid shall have been received at the registered office before the commencement of the General Meeting or adjourned meeting at which the proxy is used.
115. **Documents to be received before General Meeting.** For an appointment of a proxy for a General Meeting to be effective, the following documents must be received by MIT Group Foundation at least 48 hours before the General Meeting:
- (a) the proxy's appointment;
 - (b) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
116. Documents received following adjournment of General Meeting. If a General Meeting has been adjourned, an appointment and any authority received by MIT Group Foundation at least 48 hours before the resumption of the General Meeting are effective for the resumed part of the General Meeting.
117. **Receipt of documents.** MIT Group Foundation receives an appointment authority when it is received at any of the following:
- (a) its registered office;
 - (b) its fax number at its registered office;
 - (c) a place, fax number or e-mail address specified for the purpose in the notice of General Meeting.
118. **Validity of proxy vote.** A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.
119. **Body corporate representative.** A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise at General Meetings' members.
120. The appointment may be a standing one.
121. The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
122. A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.
123. Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a General Meeting or in voting on a resolution.

VOTING AT GENERAL MEETING

124. **Voting.** Only members are entitled to vote at General Meetings.
125. Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).
126. A member is not entitled to vote at a General Meeting unless all subscriptions payable by the member to MIT Group Foundation have been paid.
127. **Chair's casting vote.** The chair has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.
128. **Objections to right to vote.** A challenge to a right to vote at a General Meeting:
- (a) may only be made at the General Meeting; and
 - (b) must be determined by the chair, whose decision is final.
129. **How voting is carried out.** A resolution put to the vote at a General Meeting must be decided on a show of hands.

130. Before a vote is taken the chair must inform the General Meeting whether any proxy votes have been received and how the proxy votes are to be cast.
131. On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received, and an entry to that effect in a minute book is conclusive evidence of the fact. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
132. The members present may demand a poll.
133. **Matters on which a poll may be demanded.** A poll may be demanded on any resolution.
134. A demand for a poll may be withdrawn.
135. **When a poll is effectively demanded.** At a General Meeting, a poll may be demanded by:
- (a) at least 5 members entitled to vote on the resolution; or
 - (b) the chair.
- A proxy may join in the demand for a poll.
136. The poll may be demanded:
- (a) before a vote is taken;
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.
137. **When and how polls must be taken.** A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
138. A poll on the election of a chair or on the question of an adjournment must be taken immediately.
139. On a poll, votes may be given either personally or by proxy.

BOARD

ELECTION AND DURATION OF OFFICE

140. **Composition of Board.** The Board shall consist of not less than three (3) directors.
141. **Retirement of Members of Board.** At each Annual General Meeting, each of the Members of the Board shall retire from office.
142. **Election of Board.** All elected Members of the Board so retiring shall be deemed eligible for re-election.
143. The Members of the Board shall be elected by the members.
144. A member is eligible to be nominated as a Member of the Board.
145. Prior to the Annual General Meeting, members may submit nominations for the office of Member of the Board.
146. Nominations shall only be submitted by members.
147. All nominations shall be in the hands of the Secretary at least 21 days prior to the date of the Annual General Meeting.
148. Any person so nominated for election must be a member or, in the case of a body corporate, the authorised representative of a member, and must consent in writing to becoming a Member of the Board.
149. After the close of nominations and in the event of there being more nominations than the number of vacancies, the Secretary shall cause different ballot papers to be prepared.
150. The ballots, which may be received by mail, fax or scanned copies by e-mail, shall close at 5.00 pm on the day prior to the day fixed for the Annual General Meeting, but members attending the Annual General Meeting who have not previously submitted their ballot for the election of Members of the Board may cast their ballot at the appropriate time during the Annual General Meeting and these ballots shall be included and counted by the Returning Officer.
151. All votes shall rank equally and no votes received after the close of balloting at the Annual General Meeting shall be eligible for inclusion in the count.
152. The Board shall appoint the Secretary as the Returning Officer.
153. The Returning Officer shall count the votes recorded for each particular candidate in the presence of any scrutineers appointed by the Board or nominated by the candidates.
154. The Returning Officer, or a deputy appointed by the Returning Officer, shall announce the results of the election and the names of any candidate elected unopposed at the Annual General Meeting and, in the event of a tie at any ballot, the Returning Officer or the Returning Officer's deputy has a casting vote which must be exercised and announce at the Annual General Meeting.
155. **Appointment of Members of the Board.** A resolution passed at a General Meeting appointing or confirming the appointment of 2 or more Members of the Board is void unless:
- (a) the meeting has resolved that the appointments or confirmations may be voted on together; and

- (b) no votes were cast against the resolution.
156. The preceding clause does not affect:
- (a) a resolution to appoint Members of the Board by an amendment to this Constitution; or
 - (b) a ballot or poll to elect 2 or more Members of the Board if the ballot or poll does not require members voting for 1 candidate to vote for another candidate.
157. For the purposes of clause 156(b), a ballot or poll does not require a member to vote for a candidate merely because the member is required to express a preference among individual candidates in order to cast a valid vote.
158. **Appointment of officers.** The Board shall elect from its members the President, and Vice-President.
159. **Member of Board may resign by giving written notice.** A Member of the Board may resign as a Member of the Board by giving a written notice of resignation to MIT Group Foundation at its registered office.
160. **Vacation of office.** In addition to the circumstances in which the office of a Member of the Board becomes vacant by virtue of the Act, the office of a Member of the Board becomes vacant if they:
- (a) become bankrupt or makes any arrangement or composition with their creditors generally;
 - (b) become prohibited from being a director of a company by reason of any order made under the Act;
 - (c) cannot manage MIT Group Foundation because of mental incapacity or whose estate or property has had a personal representative or trustee appointed to administer it;
 - (d) resign their office by notice in writing to MIT Group Foundation;
 - (e) are absent without the consent of the Board from meetings of the Board held during a period of six months;
 - (f) hold any office of profit under MIT Group Foundation;
 - (g) cease to be a member; or
 - (h) are directly or indirectly interested in any contract or proposed contract with MIT Group Foundation and fail to declare the nature of their interest as required by the Act —
- but nothing in this clause effects the operation of clauses 218 to 220.
161. **Resolution for removal of Member of the Board.** MIT Group Foundation may by resolution remove a Member of the Board from office despite anything in:
- (a) any agreement between MIT Group Foundation and the Member of the Board; or
 - (b) any agreement between any or all members of MIT Group Foundation and the Member of the Board.
162. **Notice of intention to move resolution for removal of Member of the Board.** Notice of intention to move the resolution must be given to MIT Group Foundation at least 2 months before the meeting is to be held. However, if MIT Group Foundation calls a meeting after the notice of intention is given under this clause, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.
163. **Board Member's right to notice of resolution for removal.** MIT Group Foundation must give the Member of the Board a copy of the notice as soon as practicable after it is received.
164. **Board Member's right to put case to members.** The Member of the Board is entitled to put their case to members by:
- (a) giving MIT Group Foundation a written statement for circulation to members; and
 - (b) speaking to the motion at the meeting (whether or not the Member of the Board is a member of MIT Group Foundation).
165. The written statement is to be circulated by MIT Group Foundation to members by:
- (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - (b) if there is not time to comply with paragraph (a), having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.
166. The Member of the Board's statement does not have to be circulated to members if it is more than 1,000 words long or defamatory.
167. **Board may appoint other Members of Board.** The Members of the Board may appoint a person as a Member of the Board in order to make up a quorum for a Board meeting even if the total number of Members of the Board is not enough to make up that quorum.
168. **Confirmation by next Annual General Meeting.** If a person is appointed under clause 167 as a Member of the Board, MIT Group Foundation must confirm the appointment by resolution at the next Annual General Meeting. If the appointment is not confirmed, the person ceases to be a Member of the Board at the end of the Annual General Meeting.

POWERS AND DUTIES OF MEMBERS OF BOARD

169. **Powers and functions of Board.** MIT Group Foundation must be managed by or under the direction of and controlled by the Board.
170. The Board has and may exercise the functions conferred or imposed on it by or under this Constitution.
171. Without prejudice to and without limiting the powers conferred by this Constitution, the Board shall have the power to do any of the following:
- (a) open and maintain a bank account or bank accounts to be operated by such person or persons whether Members of the Board or not as it shall from time to time determine;
 - (b) appoint any staff as may be necessary;
 - (c) employ and superannuate officers and employees;
 - (d) review staff positions at intervals not exceeding 5 years;
 - (e) publish and distribute information concerning this Constitution and the regulations to members and other interested persons;
 - (f) do all such other things that are in the opinion of the Board incidental to or conducive to the attainment of the objects of MIT Group Foundation;
 - (g) do all things necessary to give effect to the powers contained in this Constitution.
172. **Agent under power of attorney.** The Members of the Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of MIT Group Foundation for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Members of the Board), for such period and subject to such conditions as they think fit.
173. Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Members of the Board think appropriate and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in that person.
174. **Validity.** All acts done by any meeting of the Board or of a committee of the Board or by any person acting as a Member of the Board are valid even though it is afterwards discovered that there was some defect in the appointment of a person to be a Member of the Board or a member of the committee, or to act as a Member of the Board, or that a person so appointed was disqualified. They are valid as if the person had been duly appointed and was qualified to be a Member of the Board or to be a member of the committee.

SECRETARY

175. The first Secretary is appointed by the members and thereafter by the Board.
176. The Secretary must consent in writing to holding the position of Secretary.
177. The Secretary has and may exercise such functions as are conferred or imposed on the Secretary by or under this Constitution.
178. The Secretary is responsible for:
- (a) conducting the correspondence;
 - (b) maintaining its records; and
 - (c) performing such duties as pertain to the office of Secretary.
179. *clause deleted
180. *clause deleted
181. *clause deleted
182. The Board may, from time to time, appoint a person to act as Secretary during the illness or absence of the Secretary, and the person, while so acting, has and may exercise all the functions of the Secretary and is taken to be the Secretary.
183. The Secretary may delegate to a person the exercise of:
- (a) any of the functions of the Secretary under this Constitution, other than this power of delegation; or
 - (b) any functions delegated to the Secretary by the Board, unless the Board otherwise provides in its instrument of delegation to the Secretaries.
184. The Secretary may resign by giving written notice of the resignation to MIT Group Foundation.

BOARD MEETINGS

185. **Meetings of Board.** The Board must meet not less than once every six months for the transaction of ordinary business.
186. **Calling Board meetings.** A Board meeting may be called by the President or any two Member of

- the Board giving reasonable notice to the Members of the Board.
187. **Conduct of meetings.** The conduct of business at the meetings of the Board is, subject to this Constitution, as determined by the Board.
188. **Virtual meeting of Members of Board.** A Board meeting may be called or held using any technology consented to by all the Members of the Board. The consent may be a standing one. A Member of the Board may only withdraw their consent within a reasonable period before the meeting. The following procedures apply to calling a virtual meeting of the Members of the Board:
- (a) the contemporaneous linking together by an instantaneous communication device of a number of Members of the Board not less than the quorum, whether or not any one or more of the Members of the Board is out of Australia, shall be deemed to constitute a meeting of the Board and all the provisions of this Constitution as to meetings of the Board shall apply to any such meeting held by an instantaneous communication device so long as the following conditions are met:
 - (i) all the Directors for the time being entitled to receive notice of the meeting of the Board (including any alternate for any Member of the Board) shall be entitled to notice of a meeting held by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting;
 - (ii) notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by this Constitution; and
 - (iii) each of the Members of the Board taking part in the meeting by an instantaneous communication device must be able to hear each other Members of the Board taking part at the commencement of the meeting.
 - (b) A Member of the Board may not leave a meeting held by an instantaneous communication device by disconnecting his instantaneous communication device unless he has previously expressly notified the President of the meeting of his intention to leave the meeting and a Member of the Board shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of his leaving the meeting.
 - (c) A minute of the proceedings at meetings held by an instantaneous communication device shall be sufficient evidence of such proceeding and of the observance of all necessary formalities if certified as a correct minute by the President of the meeting.
- For the purpose of this clause, "instantaneous communication device" shall include telephone, television or any other audio and/or visual device which permits instantaneous communication.
189. **Presiding member.** The President or, in the absence of the President, a Vice-President or in the absence of both of them, another Member of the Board elected to chair the meeting by the Members of the Board present, is to preside at a meeting of the Board.
190. **Quorum at Board meetings.** Except as otherwise provided by this Constitution, the quorum for a meeting of the Board is 2, and the quorum must be present at all times during the meeting.
191. If the total number of Members of the Board is not enough to make up that quorum, then the Board may only act for the purpose of increasing the number of Members of the Board to make up a quorum or for convening a General Meeting.
192. **Decisions.** A decision of the Board must be passed by a majority of the votes cast by the Members of the Board entitled to vote on the resolution.
193. In case of an equality of votes, the chair has a casting vote if necessary in addition to any vote they have in their capacity as a Member of the Board.
194. A Member of the Board is not entitled to vote in respect of any contract or proposed contract with MIT Group Foundation in which they are in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract and, if they vote in contravention of this clause, their vote shall not be counted.
195. If all the Members of the Board have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Board held on the day on which the document was signed and at the time at which the document was last signed by a Member of the Board or, if the Members of the Board signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Member of the Board.
196. **Circulating resolutions.** The Members of the Board may pass a resolution without a Board meeting being held if all the Members of the Board entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
197. Separate copies of a document may be used for signing by the Members of the Board if the wording of the resolution and statement is identical in each copy.

198. The resolution is passed when the last the Member of the Board signs.
 199. Passage of such a resolution must be recorded in the minutes.

DELEGATION AND COMMITTEES

200. **Delegation to committees.** The Board may delegate any of its powers to a committee of the Board consisting of such Members of the Board as the Board decides.
 201. A committee must exercise the powers delegated to it in accordance with any directions of the Board.
 202. The effect of the committee exercising a power in this way is the same as if the Board exercised it.
 203. The delegation must be recorded in the minute book.
 204. The members of such a committee may elect one of their number as chair of their meetings.
 205. The procedure for the calling of meetings of any such committee and for the conduct of business at those meetings is as determined by the Board or (subject to any direction of the Board) by the committee.
 206. A committee may meet and adjourn as it thinks proper.
 207. Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
 208. In the case of an equality of votes, the chair has, in addition to deliberative vote (if any), a casting vote.
 209. **Delegation by Board and Secretary.** The Board may delegate to a committee, the Secretary or any other person the exercise of any of its functions, other than this power of delegation.

CHIEF EXECUTIVE OFFICER

210. **Chief Executive Officer.** A Chief Executive Officer is appointed by the Board.
 211. The Chief Executive Officer has and may exercise such functions as are conferred or imposed on the Chief Executive Officer by the Board.
 212. The Board may, from time to time, appoint a person to act as Chief Executive Officer during the illness or absence of the Chief Executive Officer, and the person, while so acting, has and may exercise all the functions of the Chief Executive Officer and is taken to be the Chief Executive Officer.
 213. The Chief Executive Officer may delegate to a person the exercise of:
 (a) any of the functions of the Chief Executive Officer under this Constitution, other than this power of delegation; or
 (b) any functions delegated to the Chief Executive Officer by the Board, unless the Board otherwise provides in its instrument of delegation to the Chief Executive Officers.

MINUTES

214. MIT Group Foundation must keep minute books in which it records:
 (a) proceedings and resolutions of General Meetings;
 (b) proceedings and resolutions of Board meetings (including meetings of a committee of the Board);
 (c) resolutions passed by Members of the Board without a meeting.
 215. The Members of the Board must ensure that the minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
 (a) the chair of the meeting;
 (b) the chair of the next meeting.
 216. The Members of the Board must ensure that minutes of the passing of a resolution without a meeting are signed by a Member of the Board within a reasonable time after the resolution is passed.
 217. A minute that is so recorded and signed shall be conclusive evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

PROPERTY

218. **Application of income and property.** MIT Group Foundation must apply its income and property exclusively to or for the promotion of the objects of MIT Group Foundation described in clause 4 and none of it may be paid or transferred, directly or indirectly, to members, either by dividend, bonus or otherwise, or for any other object or purpose not connected with the objects of

- MIT Group Foundation.
219. **Remuneration and expenses.** No Member of the Board shall be paid any salary or fees or receive any remuneration or other benefit in money or money's worth from MIT Group Foundation.
220. Clauses 218 and 219 do not prevent the Board in good faith authorising:
- (a) the reimbursement of reasonable out-of-pocket expenses properly incurred in travelling to and from the developing country and accommodation in the developing country;
 - (b) the reimbursement of any Member of the Board or any officer for out-of-pocket expenses properly incurred:
 - (1) in attending and returning from Board meetings or any meetings of committees of Members of the Board;
 - (2) in attending any General Meetings; and
 - (3) in connection with the business of MIT Group Foundation.
 - (c) the payment of premiums for professional indemnity insurance; and
 - (d) the payment of:
 - (1) reasonable and proper remuneration or fees to any member (excluding a Member of the Board) or employee for any goods or services provided or rendered to MIT Group Foundation;
 - (2) any debt or any reasonable and proper fees to any Member of the Board under a contract between MIT Group Foundation and that Member of the Board for the provision of goods or services which are outside the scope of the ordinary duties of a director;
 - (3) reasonable and proper rent for premises demised or let to MIT Group Foundation by any member (including a Member of the Board);
 - (4) interest at a rate not exceeding the lowest rate paid for the time being by its bank in respect of term deposits on money borrowed from any member (including a Member of the Board);
- All payments to Members of the Board must be approved at a meeting of the Board.
221. **Investment.** MIT Group Foundation is required to invest its property in appropriate investments in accordance with sections 6 to 9 of the *Trustee Act 1958 (Vic)* (in summary, MIT Group Foundation may invest the assets in any forms of investment other than investments which are speculative, but, in making an investment, it must exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons).

MIT GROUP FOUNDATION OVERSEAS GIFT FUND

222. **Gift Fund.** MIT Group Foundation shall maintain a fund to be known as the **MIT Group Foundation Overseas Gift Fund** to be used for the objects of MIT Group Foundation which must be operated and maintained in accordance with the following accounting procedures:
- (1) MIT Group Foundation is:
 - (a) to maintain accounts of the assets of the Fund entirely separate and distinct from any other any Fund or assets; and
 - (b) open and maintain a separate bank account for the Fund;
 - (2) all gifts — including donations, bequests and other testamentary gifts, distributions from other charities, and gifts of money or other property — made to, or received by, MIT Group Foundation must be credited to the Fund, but it is entitled to accept any cheques containing both a gift and an amount which is not a gift (for example, a cheque paying a membership subscription and making a donation) provided that an amount equivalent to the gift is credited and transferred to the Fund;
 - (3) the following must *not* be credited to the Fund:
 - (a) any amounts or other property — including membership contributions or subscriptions, government grants, receipts from sponsorships or commercial activities, proceeds of raffles, charity auctions, dinners — which do not fall within the description in clause 232(2);
 - (b) gifts to any other fund (if any) which is operated by MIT Group Foundation and which is either is a deductible gift recipient and/or is an eligible fund under the Overseas Aid Gift Deduction Scheme;
 - (4) MIT Group Foundation is required to invest the Trust Fund in appropriate investments in accordance with sections 6 to 9 of the *Trustee Act 1958 (Vic)* and interest, dividends or other returns on those Fund investments are to be credited to the Fund;
 - (5) where a gift or donation of property other than money is made:

- (a) it must be recorded in the Fund's assets register; and
- (b) the proceeds of sale of such property (if any) must be credited to the Fund — but this does not apply to property of trivial value;
- (6) MIT Group Foundation must keep written financial records which:
 - (a) correctly record and explain its transactions in relation to the Fund;
 - (b) accurately record all receipts and outgoings in relation to the Fund; and
 - (c) would enable true and fair financial statements of the Fund to be prepared and audited;
- (7) MIT Group Foundation must not accumulate funds in the Fund excessively;
- (8) the assets of the Fund must not be used for any purpose other than for the objects of MIT Group Foundation.
- (9) **Public.** The general public will be invited to make gifts to the Fund to be used for the purpose of carrying out the objects of the Fund.
- (10) **Not-for-profit.** The assets and income of the Fund shall be applied solely in furtherance of the objects of the Fund, and no portion shall be distributed directly or indirectly to any individual, except as reimbursement of bona fide out of pocket expenses incurred on behalf of the Fund or compensation for bona fide services rendered to the Fund.

222A. **Fund Committee.**

- (1) The MIT Group Foundation Overseas Gift Fund shall be managed by the Fund Committee.
- (2) The Fund Committee:
 - (a) shall be made up of at least three (3) persons appointed as committee members by the Board from time to time; and
 - (b) shall be made up of a majority of persons who have a degree of responsibility to the general community by reason of their tenure of some public office, or their occupation or their standing in the community, such as, but not limited to, church authorities, school principals, judges, clergymen, solicitors, doctors, and other professional persons, mayors, councillors, town clerks and members of parliament.
- (3) The Members of the Board may remove a Fund Committee Member where it appears to them that the Fund Committee Member:
 - (a) has lost capacity to act as a Fund Committee Member;
 - (b) has a conflict between their duty and interest or has used their position as a member, or information obtained as a Fund Committee Member, to gain an advantage for any person or entity other than MIT Group Foundation or the Fund;
 - (c) is no longer making a contribution of sufficient value to the Fund or no longer has sufficient time to discharge their duties as a Fund Committee Member.
- (4) The Fund Committee Members may elect one of their number as chair of their meetings.
- (5) The procedure for the calling of meetings of the Fund Committee and for the conduct of business at their meetings is as determined by the Board or (subject to any direction of the Board) by the Fund Committee Members.
- (6) The Fund Committee Members may meet and adjourn as they think proper.
- (7) Questions arising at a meeting of the Fund Committee shall be determined by a majority of votes of the Fund Committee Members present and voting. In the case of an equality of votes, the chair has, in addition to deliberative vote (if any), a casting vote.
- (8) Circular resolutions.
 - (a) The Fund Committee Members may pass a resolution without a meeting being held if all the Fund Committee Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
 - (b) Separate copies of a document may be used for signing by the Fund Committee Members if the wording of the resolution and statement is identical in each copy.
 - (c) The resolution is passed when the last Fund Committee Member signs.
 - (d) Passage of such a resolution must be recorded in the minutes.
- (9) Reporting to the Board. The Fund Committee shall report to the Board on the decisions made by the Fund Committee at the next Board meeting.

223. **Receipts.** MIT Group Foundation must issue receipts for all donations, bequests, distributions from other charities, and gifts of money or other property which show:

- (1) the name of MIT Group Foundation;
- (2) its ABN;
- (3) the name of the Fund;
- (4) the amount of money donated;

- (5) if of non-monetary nature, a full and accurate description of the item or items the subject of the gift or donation;
- (6) a description of any gift of property (if any);
- (7) the date of the receipt or the date on which the gift was received; and
- (8) that the receipt is for an amount or other property received as a gift.
224. **Winding up or revocation of endorsement.** If the Fund is an eligible Fund under the Overseas Aid Gift Deduction Scheme and/or a deductible gift recipient and either:
- (a) MIT Group Foundation is wound up or deregistered;
- (b) the Fund is wound up; or
- (c) the Fund's endorsement under the Overseas Aid Gift Deduction Scheme and/or as a deductible gift recipient is revoked —
- then any surplus money or other assets of the Fund remaining after satisfaction of all liabilities attributable to the Fund shall be transferred to some other Fund, authority or institution:
- (1) having objects similar, or reasonable similar, to the objects of MIT Group Foundation;
- (2) which prohibits the distribution of its income and property to a similar extent to that imposed on MIT Group Foundation under clause 218;
- (3) which has endorsement from the Commissioner of Taxation as an income tax exempt charity under Subdivision 50-B of the *Income Tax Assessment Act 1997* and which comes within the description of Item 1.1 of section 50-5 of the Act;
- (4) which has endorsement from the Commissioner of Taxation as a deductible gift recipient under Division 30 of the *Income Tax Assessment Act 1997* and which comes within the description of Item 9.1.1 of section 30-80 of the Act; and
- (5) which is an eligible Fund under the Overseas Aid Gift Deduction Scheme.
- That fund, authority or institution may be determined by the members at or before the time of dissolution or revocation, and insofar as effect cannot be given to such provision, then to some other charitable object which is an eligible fund under the Overseas Aid Gift Deduction Scheme.
225. If the Fund is an eligible fund under the Overseas Aid Gift Deduction Scheme and either:
- (1) MIT Group Foundation is wound up or deregistered; or
- (2) the Fund wound up —
- then the Secretary or the Board must notify the Commissioner of Taxation promptly and request the Commissioner of Taxation to revoke the endorsement of Fund as an eligible fund under the Overseas Aid Gift Deduction Scheme.
226. If the Fund is an eligible fund under the Overseas Aid Gift Deduction Scheme, then the Secretary or the Board must notify:
- (1) the Commissioner of Taxation of:
- (a) any amendment to the Constitution (including a copy of the amendment); and
- (b) any changes that affect the operational or financial arrangements of the Fund; and
- (2) the Department of any amendment to the Constitution which changes the name of the Fund —
- within 30 days of the making of the amendment or change.

FINANCIAL REPORTS

227. **Obligation to keep financial records.** MIT Group Foundation must keep written financial records which:
- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited.
228. **Audit.** Unless the MIT Group Foundation is a "small company limited by guarantee" within the meaning section 45B of the Act, a properly qualified auditor or auditors is to be appointed to examine the financial records.
229. **Annual financial reporting to members.** MIT Group Foundation must report to members for a financial year by either:
- (a) sending members copies of:
- (1) the financial report for the year; and
- (2) the Board's report for the year; and
- (3) the auditor's report on the financial report; or
- (b) sending members a concise report for the year that complies with clause 240.
230. **Concise report.** A concise report for a financial year consists of:
- (a) a concise financial report for the year drawn up in accordance with accounting standards made for the purposes of this clause; and

- (b) the Board's report for the year; and
 - (c) a statement by the auditor:
 - (1) that the financial report has been audited; and
 - (2) whether, in the auditor's opinion, the concise financial report complies with the accounting standards made for the purposes of clause 230(a); and
 - (d) a copy of any qualification in, and of any statements included in, the auditor's report on the financial report; and
 - (e) a statement that the report is a concise report and that the full financial report and auditor's report will be sent to the member free of charge if the member asks for them.
231. **Deadline for reporting to members.** MIT Group Foundation must report to members under clause 239 by the earlier of:
- (a) 21 days before the next Annual General Meeting after the end of the financial year; or
 - (b) 4 months after the end of the financial year.
232. **Member's choices for annual financial information.** A member may request MIT Group Foundation:
- (a) not to send them the material required by clause 239; or
 - (b) to send them a full financial report and the Board's report and auditor's report.
233. A request may be a standing request or for a particular financial year. The member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.
234. The time for complying with a request under clause 242(b) is:
- (a) 7 days after the request is received; or
 - (b) the deadline for reporting under clause 241 —
- whichever is later.
235. A full financial report, the Board's report and auditor's report are to be sent free of charge unless the member has already received a copy of them free of charge.
236. **Inspection by members.** A member has a right of access to the financial records at all reasonable times.
237. **Cheques, etc.** Either:
- (a) the Secretary; or
 - (b) any two Members of the Board —
- may sign, draw, accept, endorse or otherwise execute a cheque or other negotiable instrument.
238. The Board may determine that a cheque or other negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

INDEMNITY AND INSURANCE

239. **Indemnity.** To the extent permitted by law, MIT Group Foundation may indemnify each person who is, or has been, a Member of the Board or Secretary of MIT Group Foundation against any liability arising directly or indirectly from the person serving or having served in that capacity:
- (a) to any person, except for:
 - (1) a liability owed to MIT Group Foundation or a related body corporate;
 - (2) a liability for a pecuniary penalty or compensation order made under the Act; or
 - (3) a liability that is owed to someone (other than MIT Group Foundation) and did not arise out of conduct in good faith; and
 - (b) for legal costs incurred in defending a proceeding for liability incurred as a Member of the Board or Secretary of MIT Group Foundation if the costs are not incurred:
 - (1) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 249(a);
 - (2) in defending or resisting criminal proceedings in which the person is found guilty;
 - (3) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to be established; or
 - (4) in connection with proceedings for relief to the person under the Act in which the court denies the relief.
240. Clause 249(b)(3) does not apply to costs incurred responding ASIC or a liquidator as part of an investigation before ASIC or the liquidator commenced proceedings for the court order.
241. **Insurance.** MIT Group Foundation may, to the extent permitted by law, procure and obtain professional indemnity insurance or cover, or pay or agree to pay a premium for such insurance, for a person who is, or has been, a Member of the Board or Secretary of MIT Group Foundation against any liability:

- (a) arising directly or indirectly from the person serving or having served in that capacity including, but not limited to, a liability for negligence except where the liability arises out of:
 - (1) conduct involving a wilful breach of duty in relation to MIT Group Foundation; or
 - (2) a contravention of sections 182 or 183 of the Act dealing with improper use of position or information; or
 - (b) for legal costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.
242. **Other officers.** Nothing in clauses 249 or 251 limits the powers of MIT Group Foundation, to the extent permitted by the Act, to indemnify or insure other officers of MIT Group Foundation.
243. **Document containing indemnity or insurance.** The Members of the Board of MIT Group Foundation may authorise MIT Group Foundation to, and MIT Group Foundation may enter into any document containing an indemnity in favour of, or insurance policy for the benefit of, a person who may be indemnified or insured by MIT Group Foundation, on such terms as the Members of the Board approve and, in particular, that applies to acts or omissions prior to or after the time of entering into the indemnity or policy.
244. The benefit of a deed of indemnity or similar document containing an indemnity, continues according to the terms of the deed or document, even after the terms of clause 253 are amended, repealed or modified, in respect of a liability arising out of acts or omissions occurring prior to the amendment, repeal or modification.

COMMON SEAL AND EXECUTION OF DOCUMENTS

245. **Execution of documents without a seal.** MIT Group Foundation may execute a document without using a common seal if the document is signed by:
- (a) two Members of the Board;
 - (b) a Member of the Board and the Secretary.
246. **Execution under seal.** If MIT Group Foundation has a seal:
- (a) the Members of the Board shall provide for its safe custody of the seal;
 - (b) it may only be used only with the authority of the Members of the Board, or of a committee of the Members of the Board authorised by the Members of the Board to authorise the use of the seal.
247. MIT Group Foundation also may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
- (a) two Members of the Board;
 - (b) a Member of the Board and the Secretary.
248. MIT Group Foundation may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with clauses 255 or 257, but this does not limit the ways in which MIT Group Foundation may execute a document (including a deed).
249. A Member of the Board may sign an instrument to which the seal of MIT Group Foundation is affixed even though the Member of the Board is interested in the contract or arrangement to which the instrument relates.
250. **Signing documents.** The power of MIT Group Foundation to sign, discharge and otherwise deal with contracts can be exercised by a person acting with its authority and on its behalf.

RULES AND GUIDELINES

251. **Rules and guidelines.** The Board may make rules or issue guidelines dealing with:
- (a) the admission of applicants for membership;
 - (b) the rights or obligations of members;
 - (c) the operation of programs in developing countries;
 - (d) other matters —
- which are not specified by this Constitution or the Act.
252. A rule or guideline which, directly or indirectly, is inconsistent with a provision of this Constitution or the Act is invalid.
253. **Notice.** A copy of every alteration or addition made to the rules is to be sent to every member at their last known address.
254. The omission, unless wilfully made, to send a copy or the non-receipt of it does not invalidate the alteration or addition.
255. **Interpretation.** The Board is the sole authority for interpreting the rules and guidelines.

DISSOLUTION AND WINDING UP

256. **Contribution by members.** Every member undertakes to contribute to the property of MIT Group Foundation in the event of MIT Group Foundation being wound up during the time that he, she or it is a member, or within one year after he, she or it ceases to be a member, for payment of the debts and liabilities of MIT Group Foundation contracted before he, she or it ceases to be a member and of the costs, charges and expenses of the winding-up and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding \$10.00.
257. If upon the dissolution or winding-up of MIT Group Foundation there remains, after the satisfaction of all its debts and liabilities, any money or other assets whatever, the same shall not be paid to or distributed among the members, but shall be given or transferred to (and pending such transfer MIT Group Foundation shall hold its assets on trust for) some other fund, authority or institution:
- (1) having objects similar to the objects of MIT Group Foundation;
 - (2) which prohibits the distribution of its income and property to a similar extent to that imposed on MIT Group Foundation under clause 218; and
 - (3) which has endorsement from the Commissioner of Taxation as an income tax exempt charity under Subdivision 50-B of the *Income Tax Assessment Act 1997* and which comes within the description of Item 1.1 of section 50-5 of the Act.
258. That fund, authority or institution may to be determined by the members at or before the time of dissolution or winding-up, and insofar as effect cannot be given to such provision, then to some other charitable object which satisfies the criteria prescribed by clause 267.

NOTICE

259. **Notice.** A notice may be given by MIT Group Foundation to any member by sending it by post to the address for the member in the register of members or the last address of the person known to the Secretary or the alternative address, if any, nominated by the member.
260. **When notice by post or fax is given.** A notice of a General Meeting sent by post is taken to be given 3 days after the letter is posted.
261. A notice sent by fax, e-mail or other electronic means is taken to be given on the business day after it is sent.

ADOPTION AND MODIFICATION OF CONSTITUTION

262. **Modification of Constitution.** The members may modify or repeal this Constitution, or a provision of this Constitution, by special resolution passed at either an Annual General Meeting or at an Extraordinary General Meeting.
263. **Notice.** A notice of the proposed alterations must be provided to every member prior to the date of the meeting.
264. **Date of effect of adoption, modification or repeal of Constitution.** A special resolution adopting, modifying or repealing this Constitution takes effect:
- (a) if no later date is specified in the resolution, then on the date on which the resolution is passed; or
 - (b) on a date specified in, or determined in accordance with, the resolution.
265. **Copy of Constitution to member.** MIT Group Foundation must send a copy of this Constitution to a member within 7 days if the member:
- (a) asks MIT Group Foundation, in writing, for the copy; and
 - (b) pays any fee (up to the prescribed amount) required by MIT Group Foundation.