

Corporations Law
A Company Limited by Guarantee
Not having a share capital

CONSTITUTION
Of
SHANTHI FOUNDATION LIMITED

General

1.1 Name

The name of the company is Shanthi Foundation Limited

1.2 Definitions

In this constitution:

- (a) **“Company”** means Shanthi Foundation Limited;
- (b) **“Corporations Act”** means the Corporations Act 2001 (Cth);
- (c) **“Directors”** means the board of directors of the company;
- (d) **“Director”** means an individual member of the board of directors;
- (e) **“Members”** mean the individuals who belong to the company;
- (f) **“Term”** is the period of office of a director.

1.3 Exclusion of replaceable rules

Subject to Part 2B.4 of the Corporations Act, the replaceable rules shall not apply to the company.

1.4 The company – its nature, objects and powers

Nature

- (a) The company:
 - (i) is a company limited by guarantee;
 - (ii) will operate predominantly for the promotion, development and attainment of its objects;
 - (iii) will apply its profits (if any) or other income in promoting its objects; and
 - (iv) is not carried on for the purpose of profit or gain to its individual members.
- (b) The registered office of the company shall be at a location determined by the directors of the company.

Objects

- (c) The objects of the company are as follows
 - (i) To carry on as a charitable not-for-profit organisation promoting health and palliative care services to the impoverished and marginalised in our society both nationally and internationally.
 - (ii) To promote community education in matters relating to health and palliative care.
 - (iii) To provide opportunities of respite for the sick and/or their families.

- (iv) To subscribe to, become a member of and co-operate with any other company, association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company, provided that the Company shall not subscribe to or support with its funds any association or organisation which allows the distribution of its income and property among its members.
- (v) To purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property, real and personal; and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Company. Provided that in case the Company shall take or hold any property which may be subject to any trusts the Company shall only deal with the same in such manner as is allowed by the law having regard to such trusts.
- (vi) To enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects or any of them; and to obtain from any such Government or authority any rights, privileges and concessions which the Company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
- (vii) To appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workers and other persons as may be necessary or convenient for the purposes of the Company.
- (viii) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company or the dependants or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable objects.
- (ix) To construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance the Company's interest, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof.
- (x) To invest and deal with the money of the Company not immediately required.³
- (xi) To borrow or raise or secure the payment of money in such manner as the Company may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures, perpetual or otherwise, charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off any such securities.
- (xii) To make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
- (xiii) In furtherance of the objects of the Company to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.
- (xiv) To take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Company's property of whatsoever kind sold by the Company, or any money due to the Company from purchasers and others.

- (xv) To take any gift of property whether subject to any special trust or not, for any one or more of the objects of the Company but subject always to the proviso in para (e) of this clause.
- (xvi) To take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company, in the shape of donations, annual subscriptions or otherwise.
- (xvii) To print and publish any newspapers, periodicals, books or leaflets that the Company may think desirable for the promotion of its objects.
- (xviii) In furtherance of the objects of the Company to amalgamate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company and which shall prohibit the distribution of its or their income and property among its or their members.
- (xix) In furtherance of the objects of the Company to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate.
- (xx) In furtherance of the objects of the Company to transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate.
- (xxi) To make donations for charitable purposes.
- (xxii) To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.

Powers

- (d) Solely for the purpose of carrying out the objects, but not otherwise, the company shall have the legal capacity and all the powers of a natural person. The powers set forth in subsection 124(1) of the Corporations Act shall apply to the company except insofar as they are inconsistent with the objects of the company.

1.5 Application of income

- (a) The assets and income of the company shall be applied solely in furtherance of the objects of the company, as set forth in clause 1.4 of this constitution.
- (b) No part of the assets or income shall be distributed, whether directly or indirectly, by way of dividend, bonus or otherwise to any member.
- (c) No remuneration or other benefit in money or money's worth shall be paid or given by the company to any member who holds any office of the company.
- (d) Nothing contained in this clause prevents the payment in good faith of or to any member for:
 - (i) any services rendered to the company, whether or not as an employee;
 - (ii) goods supplied to the company in the ordinary and usual course of operation;
 - (iii) interest on money borrowed from any member;
 - (iv) rent for premises demised or let by any member to the company; and/or
 - (v) any out-of-pocket expenses incurred by the member on behalf of the company;

provided that the payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

1.6 Liability of members

The liability of the members is limited.

1.7 Members guarantee

Every member of the company undertakes to contribute an amount not exceeding twenty dollars (\$20) to the property of the company in the event of it being wound up while that person is a member or within one year thereafter for:

- (a) payment of the debts and liabilities of the company contracted before the time the membership ceased;
- (b) the costs, charges and expenses of winding up; and
- (c) for an adjustment of the rights of contributories among themselves.

1.8 Distribution of property on winding-up

- (a) If the company is to be wound up, application for deregistration may be made on Form 6010 (see the Corporations Act) if:
 - (i) all members agree to de-register;
 - (ii) the company is not carrying on a business;
 - (iii) the company has paid all penalties and fees under the Corporations Act;
 - (iv) the company has no outstanding debts; and
 - (v) the company is not engaged in any legal proceedings.

Otherwise, if the company is wound up, it will be done in accordance with section 491 of the Corporations Act.

- (b) If the company is deregistered or wound up, any property or money remaining after its debts have been paid shall be given to one or more organisations that are non-profit organisations with similar purposes to the company. The organisation(s) are to be determined by the members at or before the time of dissolution.

2. Members

2.1 Class(es) of membership

Categories of membership shall be as determined by the board from time to time.

2.2 Member's contributions/fees

The cost of membership of the company shall be determined from time to time by the directors.

2.3 Eligibility of members

- (a) To be eligible for membership of the company, members or applicants for membership must be eighteen years or over and have a strong commitment to the company's objects and values.
- (b) For the avoidance of doubt, there shall be no limit on the number of members that the company may accept.

2.4 Application for membership

An application for membership must meet the requirements as approved by the board as may be varied from time to time.

2.5 Determination of application by the board

- (a) An applicant for membership is taken to be admitted as a member upon the board (or its appointee) approving the application.
- (b) If the board (or its appointee) refuses a membership application, the board shall supply written reasons to the applicant.

2.6 Register of members

The register of members shall be kept safe and private, and shall be used solely for the objects of the company unless explicit permission is given to release personal information by the member concerned.

2.7 Rights and duties of members

- (a) Each individual member has full voting rights at general meetings of members and special meetings of members, including all special resolutions.
- (b) Each individual member must act in accordance with the values of the company and consider himself or herself an ambassador of the company.

2.8 Cessation of membership

- (a) The board has the right, subject to the rules of natural justice and by a two-thirds majority decision, to cancel the membership of a member for actions deemed to be detrimental to the cause and objects of the company.
- (b) The board shall remove from the membership record the name and particulars of any member who ceases to be a member, and shall maintain a file or files of ceased members.
- (c) A person who has ceased to be a member may be readmitted to membership in accordance with the normal requirements for membership.

3. Board of directors

3.1 Composition of board

- (a) The company shall have between three and seven directors (collectively known as the "board of directors").
- (b) The company secretary must be a member of the board of directors.
- (c) The board of directors shall elect, by a simple majority, a member of the board to act as chairperson of the board of directors.

3.2 Directors duties

It shall be the duty of the directors to:

- (a) perform any and all duties imposed on them collectively or individually by law or as set out in this constitution;
- (b) appoint and remove, employ and discharge and, except as otherwise provided in this constitution, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the company;
- (c) supervise all officers, agents and employees of the company to ensure that their duties are performed properly;
- (d) develop and maintain an up to date philosophy and purpose of the organisation; and
- (e) meet at such times and places as required by this constitution.

3.3 Compensation

Directors shall serve without compensation, except that they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their duties. The directors must approve all payments made by the company to any director.

3.4 Appointment of directors and term of office

- (a) When the board determines that a new director is needed, either as a replacement for an existing director or as an additional director, the board may nominate a person to act as that director.
- (b) If the nominee accepts that nomination, the nominee will stand for election at the next annual general meeting or at a special meeting of members and must be elected by ordinary resolution of the members.
- (c) Each director shall hold office for a period of three years (“term”).
- (d) There is no limit to the number of terms a director can hold, provided that the director is nominated and elected in accordance with this clause at the end of each of their terms.

3.5 Removal of directors

The forced removal of a director requires:

- (a) at least a two-thirds majority vote from the entire board, including the member in question; or
- (b) a vote of no-confidence passed by a special resolution of the members.

3.7 Board meeting procedures

The board shall meet (by whatever means suit the directors) on at least four occasions each calendar year to discuss issues relating to strategy, direction and performance of the company.

4. Proceedings of board meetings

4.1 Regular meetings

Regular meetings of directors shall be held as determined by the board of directors.

4.2 Special meetings

Special meetings of the board of directors may be called by the secretary or by any two directors.

4.3 Notice of meetings

At least five business days prior notice of a meeting of the board shall be given by the secretary of the company, or by persons designated by the chairperson of the board, to each director of the board. Such notice must be written and state the place, date and time of the meeting and the agenda of the meeting, and may be delivered by post or email.

4.4 Quorum for meetings

- (a) A quorum (which will not reduce to less than three) shall consist of a simple majority of the duly elected members of the board of directors.
- (b) Directors can participate in meetings by telephone and their presence and vote will be counted as valid if the directors present at the meeting so approve or if the meeting has been specifically designated to include communication by telephone.
- (c) Except as otherwise provided under this constitution, no business shall be considered by the board at any meeting at which the required quorum is not present, and the only motion which the chair shall entertain at such meeting is a motion to adjourn.

4.5 Majority action as board action

- (a) Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board of directors, unless this constitution states that a greater percentage or different voting rules for approval of a matter by the board is required.
- (b) If a director cannot attend a regular or special meeting, that director can give his or her proxy by written request to another director to vote on certain or all matters that may come before the board at a meeting.

4.6 Conduct of meetings

- (a) The chairperson of the board of directors shall preside at all meetings of the board of directors. In the chairperson's absence, an acting chairperson shall be chosen by a majority of the directors present at the meeting and fulfil the duties of the chairperson.
- (b) The company secretary shall act as secretary of all meetings of the board, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.
- (c) The company secretary shall cause to be kept and recorded minutes of all meetings of the board of directors.

4.7 Vacancies

Any director may resign effective upon giving written notice to the chairperson of the board, the company secretary, or the board of directors, unless the notice specifies another time for the effectiveness of such resignation. No director may resign if the company would then remain without a duly elected director or directors in charge of its affairs.

4.8 Restrictions on voting

A director who has a material personal interest in a matter that is being considered at a directors meeting must not be present while the matter is being considered at the meeting, or vote on the matter.

5. Meetings of members

5.1 General meetings

- (a) An annual general meeting ("AGM") shall be called at the end of each operating year. Each member is invited to participate in the AGM and each member has the right to vote on any issues raised and voted upon at the AGM.
- (b) Each member who is unable to attend the AGM is entitled to a proxy vote. The member can nominate a director to vote on his or her behalf by sending a proxy form to the company secretary to be received at least three days before the AGM.
- (c) The board of directors shall determine the location, the agenda and the procedures of the AGM.
- (d) The chairperson shall preside as chairperson of the AGM except in relation to any election for which the chairperson is a nominee, or where a conflict of interest exists. If the chairperson is not present, or is unwilling or unable to preside, any director present may preside at that meeting only.

5.2 Special meetings

- (a) The board or a minimum of 20% of members may call for special meetings of members. At least 21 days notice of the special meeting to all members must be given. Every member is invited to participate in the special meeting and each member has the right to vote on any issues raised and voted upon at the special meeting.
- (b) The procedures stipulated at sub-clauses 32.2, 32.3 and 32.4 apply also to special meetings.

5.3 Quorum for meetings of members

A quorum at all general and special meetings of members shall consist of a minimum of 20% of members or five members, whichever is greater.

[The constitution can make explicit provision for the consequences of a meeting at which a quorum is not reached]

5.4 Voting procedure

At any meeting a resolution put to the vote of the meeting shall be decided on a show of hands (or if via teleconference by a call of “yes” or “no”) unless a poll is demanded:

- (a) by the chairperson; or
- (b) a simple majority of members present at the meeting and entitled to vote on the resolution.

For those members not in attendance a proxy form will be honoured as allowed for in clauses 32 and 33.

5.5 Entitlement to vote

- (a) All members shall be entitled to vote at meetings, except for the chairperson who shall have no deliberate vote.
- (b) Where voting at meetings is equal the chairperson may exercise a casting vote.

5.6 Altering the constitution

This constitution shall not be altered except by special resolution in accordance with the Corporations Act.