

Schedule 2

Constitution of the Manuae Enea Conservation Trust Ltd

Part 1: General provisions

1. This constitution supplements provisions of the Act

This constitution supplements certain provisions of the Companies Act.

2. Interpretation

(1) This constitution must be read in conjunction with, and subject to, the Act.

(2) In this constitution:

"Act" means the Companies Act 2017.

"MECT" means MANUAE ENUA CONSERVATION TRUST LTD being the charitable company created by this constitution.

"PMI" means the PROPRIETORS OF MANUAE INCORPORATED being the sole shareholder of the MECT.

"Trustee" as this is a charitable company, the word "trustee" is used as equivalent to a "director" in the Act.

"Charitable Purpose" means every such purpose as is, from time to time, recognised as being a charitable purpose under to the laws of the Cook Islands

3. Name of charitable company

An application to change the name of the charitable company must not be made without the prior approval of the PMI.

4. Patron and advisor/s to the MECT

The PMI may appoint a patron of, and/or, advisor/s to the MECT.

5. The objects for which this charitable company (MECT) is established are:

1) The MECT hereby created is not for profit or for gain but for charitable purpose such that all income derived from the administration of the land subject of the MECT, namely Manuae Atoll, which includes the islets of Te Au O Tu, and Manuae, plus surrounding lagoon and reefs, including the marine and land resources, are not to be distributed, but to be applied for the general conservation and restoration of the atoll's natural resources.

2) To manage Manuae Atoll land and marine resources for nature conservation and eco-tourism development, conservation of historical and prehistoric structures, support of science and education, and the revival of traditional cultural practices;

3) Educating all people and communities about the conservation and environmental values that are involved in ecological conservation and restoration of the environment;

4) Educating all people and communities on good governance and regulated tourism as a tool in managing Manuae Atoll, for now, and for the future;

5) Empowerment of youth and disabled to play key roles in conservation & environmental restoration.

6) Initiating and supporting any other conservation measures, including but not limited to managing marine, lagoon, coastal, atoll vegetation and wetlands, and other quality habitat for endangered and native species or conservation programs or projects of like nature;

7) To advance the wellbeing and welfare of all people and communities, in its most liberal and general term including through the implementation of education scholarship schemes and of ecologically sustainable business;

8) To carry out any, or all, of the objects of the MECT and exercise any one, or more, of its powers in any part of the world, either as principal, agent, contractor, trustee, or otherwise, and by or through trustees or agents or otherwise, and either alone or in conjunction with others;

9) To subscribe, donate money for charitable or benevolent purposes, for any conservation, science, indigenous knowledge, environmental exhibition, or publication.

10) Bringing and defending proceedings before any court, with the object of furthering the conservation, restoration, and lawful protection of biodiversity in the Cook Islands.

11) Seeking contributions, sponsorships, donations, bequests, real property, or any other form of property towards supporting the purposes of the MECT.

12) Acquiring the operations, assets and liabilities of any person, society, or company, or other entity that further the aims of the MECT.

13) Entering into any contract, partnership, MOU, joint venture, concession, or arrangement of any sort, with any person, society, company, government, or other entity, to further the aims of the MECT.

14) It is expressly declared that the activities of the MECT are to be conducted only in furtherance of the charitable purpose of the MECT and are not to be so construed as to authorise the pursuit of any non-charitable purpose.

Part 2: Shares and share register

6. MECT has one shareholder only

The MECT has 1 shareholder, which is the PMI

7. Number of shares

The total number of shares of the MECT is one (1), which is held by the PMI.

8. Share register – no notice of trust in the share (other than PMI)

No notice of a trust over the single share, whether express or implied, may be entered on the share register.

9. Form and location of share register

The share register must be kept in written form at the PMI's registered office.

10. Status of registered shareholder

(1) The MECT must treat the registered holder of the single share (PMI) as the only entity entitled to:

- (a) receive notices; and
- (b) exercise rights and powers attaching to the share.

11. Transfer of shares

The single share of the MECT is not transferable.

12. PMI decisions and exercise of PMI powers

A resolution in writing signed by the PMI is as valid as if it had been passed at a meeting of the PMI.

13. Distributions

No dividend may be paid, or other financial distribution made, to the PMI.

14. Annual meeting of MECT, and annual report to PMI

- (1) The MECT need not hold an annual meeting if everything required to be done at that meeting is done by resolution in accordance with this constitution.
- (2) The chair of MECT is required to prepare an annual report to the PMI.
- (3) The treasurer of MECT is required to prepare an annual financial report for the PMI.
- (4) The treasurer of the MECT is required to prepare financial records in respect of any accounting period requested by the PMI.

Part 3: Trustees

15. Number of MECT trustees & list of founding trustees

- (1) There shall be no less than 3 trustees, and no more than 6 trustees of the MECT.
- (2) The founding trustees shall be;
 - (1) Teuira Ka
 - (2) Nicholas Henry
 - (3) John Hosea
 - (4) Rima Mata Story

16. Appointment and removal of MECT trustees

- (1) All trustees of the MECT must be a landowner, or the descendant of a landowner.
- (2) Trustees of the MECT are appointed or removed by the PMI on an as-needed basis.

17. When MECT trustee vacates office

A trustee vacates office if he or she:

- (a) is removed from office in accordance with clause 16; or
- (b) resigns in accordance with sections 80 and 81 of the Act; or
- (c) becomes disqualified from being a trustee (under section 75 of the Act); or
- (d) in the opinion of a majority of the other MECT trustees is for any reason unfit to carry out the duties of a trustee. This request for the removal of a trustee by the MECT must be reported to the PMI within 7 days, and must be upheld by the PMI in a supporting resolution; or
- (e) dies.

18. Powers and duties of MECT trustees

The business and affairs of the MECT must be managed by, or under the direction, or supervision, of the trustees, subject to any directions given by the PMI.

19. Delegation of powers, and remuneration of employees, by trustees

- (1) The trustees of the MECT may delegate any of their powers to a sub-committee, which must consist of at least one trustee. This sub-committee may include other officers, advisors, or employees of the MECT.
- (2) The trustees may pay themselves, and other officers, advisors, and employees of the MECT, such salaries and allowances as may be reasonable and appropriate.

(3) The trustees must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(4) The provisions of this constitution relating to proceedings of trustees also apply to proceedings of any sub-committee of the MECT, except to the extent that the trustees determine otherwise.

20. Interested trustees and conflicts of interest

A trustee, or member of a sub-committee, must not exercise any voting power, if the individual in question is directly or indirectly interested, financially or otherwise, in the exercise of that power, unless the matter in question has been approved by the PMI.

21. Indemnity and insurance

The MECT may provide an indemnity, or purchase insurance, for a current or former: trustee, officer, employee, or a related entity.

Trustees' meetings

22. Procedure at meetings of trustees

(1) Clauses 22 to 29 of this constitution set out the procedure to be followed at meetings of trustees.

(2) Subject to subclause (1), a meeting of trustees may determine its own procedure.

23. Chairperson, Secretary, Treasurer

(1) Unless specifically stated by resolution of the PMI, the chairperson of the PMI is to become the chairperson of the MECT.

(2) If the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the trustees present may choose 1 of their number to be the chairperson of the meeting.

(3) Unless specifically determined by a resolution of the PMI, the secretary and treasurer of the MECT are to be appointed by a resolution of the trustees of the MECT.

24. Notice of meeting

(1) A trustee, or on the request of a trustee an employee or other official, may convene a meeting of trustees by giving notice in accordance with this clause.

(2) Not less than 3 days notice of a meeting of trustees must be given to every trustee who is in the Cook Islands or who may be readily contacted outside the Cook Islands.

(3) An irregularity in the notice of a meeting is waived if:

(a) all trustees entitled to receive notice of the meeting attend the meeting without protest as to the irregularity; or

(b) all trustees entitled to receive notice of the meeting agree to the waiver.

25. Methods of holding meeting

A meeting of trustees may be held either:

(a) by a number of the trustees who constitute a quorum being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all trustees participating and constituting a quorum may simultaneously hear each other throughout the meeting.

26. Quorum

(1) A quorum for a meeting of trustees is a majority of trustees.

(2) No business may be transacted at a meeting of trustees unless a quorum is present.

27. Voting

(1) Each trustee has 1 vote.

- (2) The chairperson has a casting vote.
- (3) A resolution of the trustees is passed if:
 - (a) it is agreed to by all trustees present without dissent; or
 - (b) a majority of the votes cast are in favour.
- (4) A trustee present at a meeting is presumed to have agreed to, and to have voted in favour of, a resolution of the trustees unless he or she expressly dissents from, or votes against, the resolution at the meeting.

28. Minutes

The secretary of MECT must ensure that minutes are kept of all proceedings at meetings of trustees.

29. Unanimous resolution of trustees

- (1) A resolution signed or assented to by all trustees is as valid and effective as if it had been passed at a meeting of the trustees duly convened and held.
- (2) Any such resolution may consist of several documents (including email, SMS text or other similar means of communication) in like form, each signed or assented to by 1 or more trustees.
- (3) A copy of any such resolution must be entered in the minute book of the trustees' meetings

MECT records and auditor

30. Access to MECT records

The PMI is entitled to access the MECT records as if the PMI were a trustee.

31. Appointment of auditor

(1) The MECT may appoint an auditor who is qualified to hold that office under section 169 of the Act to:

- (a) hold office for the period specified in the notice; and
- (b) audit the financial statements of the MECT.

(2) The PMI may remove and/or appoint an auditor by notice to the MECT and to that auditor.

Part 4: Liquidations

32. Resolution to terminate the MECT

The PMI may terminate the MECT by a resolution in writing signed by 75% or more of the PMI committee members.

33. Distribution of surplus assets

Any financial surplus which remains after the termination of the MECT (a charitable company), and after the satisfaction of all its debts and liabilities, will not be distributed to any individual person, or to the PMI, or to the trustees of the MECT, but will be given to some other charitable body.