

JL/VJ/KvB5113487

**Execution copy**

Translation of the Dutch deed of incorporation of the Mlambe Foundation

**NOTE ABOUT THIS TRANSLATION:**

**This document is an English translation of a document prepared in Dutch. In preparing this document, an attempt has been made to translate as literally as possible without jeopardising the overall continuity of the text. Inevitably, however, differences may occur in translation and if they do, the Dutch text will govern by law.**

**In this translation, Dutch legal concepts are expressed in English terms and in their original Dutch terms. The concepts concerned may not be identical to concepts described by the English terms as such terms may be understood under the laws of other jurisdictions.**

**DEED OF INCORPORATION OF STICHTING MLAMBE.**

This ninth day of August two thousand and five, there appeared before me, Emanuel Josephus Wilhelmus Maria Manders, hereinafter: civil law notary, as a substitute of Rudolf van Bork, civil law notary at Amsterdam, the Netherlands:

dr. Lilian Francis Antoinette Steffens, domiciled at Govert Flinckstraat 134-II, 1072 EM Amsterdam, the Netherlands, born in Haren (Groningen) on the twenty-fifth day of May of nineteen hundred and sixty-seven, holder of a driver's licence with number 3322706207,

hereinafter: the "**Incorporator**".

The Incorporator declared: to hereby incorporate a foundation under Dutch law ('stichting') hereinafter: the "**Foundation**", with the following Articles of Association.

**ARTICLES OF ASSOCIATION****Article 1. Name and Official Seat.**

- 1.1 The name of the Foundation is: Stichting Mlambe.
- 1.2 Outside of the Netherlands the Foundation shall go by the name: Mlambe Foundation.
- 1.3 The official seat of the Foundation is in the municipality of Hilversum, the Netherlands.

**Article 2. Objects and funds.**

- 2.1 The object of the Foundation is to enhance and stimulate the conservation of the cultural heritage in Malawi and to stimulate sustainable cultural and economic development in Malawi, inspired by its rich history.
- 2.2 The Foundation will achieve this objective, *inter alia*:
  - through research of, and education in respect of, the conservation of the heritage of Malawi;

- by supporting and initiating projects with respect to different aspects of the cultural heritage of Malawi, without excluding any ethnic group or historical period; and
- by supporting any and all activities that contribute to the above.

**Article 3. Capital.**

The capital of the Foundation will be formed by grants, donations, bequests or assets received through testamentary disposition, as well as other assets.

**Article 4. Board: Composition, Appointment, Resignation.**

- 4.1 The Board of the Foundation shall consist of at least five persons, to be determined by the Board. An incomplete Board shall retain its authorities.
- 4.2 Board members are to be appointed by the Board. Vacancies that may arise shall be filled at the earliest opportunity.
- 4.3 The Board shall elect a chairperson, a secretary and a treasurer from among its midst.
- 4.4 A member of the Board shall be appointed for a maximum term of five years. A member of the Board may be re-appointed for just one additional term of five years, unless there are material arguments for a second re-appointment of that member. A member of the Board may at any time be suspended or dismissed by the Board.
- 4.5 A person that has a close family relationship (i.e. blood related or related by marriage, down to the fourth degree) or similar relationship with a co-member of the Board cannot be appointed as a member of the Board.
- 4.6 A Board member ceases to hold office:
- a. upon his or her death;
  - b. upon his or her resignation, either voluntarily or as a result of the end of the term for which he or she has been appointed (periodic resignation);
  - c. upon his or her being declared bankrupt, applying for a suspension of payments or petitioning for application of the debt restructuring provision referred to in the Dutch Bankruptcy Act;
  - d. upon the appointment of a custodian to administer his or her affairs or upon a court decision pursuant to which one or more of his or her assets are placed under tutelage
  - e. upon his or her removal from office by the court in cases provided for by law;
  - f. upon his or her removal from office by the Board for "important reasons";
  - g. the coming into existence of a close family relationship or similar relationship between the members of the Board, as referred to in Article 4.5.
- 4.7 Members of the Board shall not (directly or indirectly) receive any salary. A reasonable compensation for costs made on behalf of the Foundation or for activities performed for the Foundation are not considered salary. These compensations shall be included and explained in the annual accounts.

**Article 5. Board: duties and powers.**

- 5.1 The Board shall be entrusted with the management of the Foundation.

- 5.2 The Board shall be authorised to resolve to enter into agreements to purchase, alienate or encumber registered property and to enter into agreements whereby the Foundation binds itself as surety or joint and several co debtor or guarantees or secures the debts of a third party as well as to represent the Foundation in such transactions.

**Article 6. Board: Representation.**

- 6.1 The Foundation shall be represented by the Board. The authorisation to represent the Foundation is also vested in:
- a. the chairperson acting together with the secretary and the treasurer; and
  - b. the chairperson acting together with the treasurer.
- 6.2 The Board may resolve to grant a power of attorney to one or more members of the Board and/or to one or more third parties to represent the Foundation within the limits of that power of attorney.
- 6.3 In all cases where the Foundation has a conflict of interest with one or more members of the Board, the Foundation shall be represented by a person appointed by the Board.
- 6.4 A conflict of interest arises, *inter alia*, in the event of the performance of a legal act for value between the Foundation and (i) its members of the Board and/or its employees; (ii) persons that have a close family relationship with any of the persons mentioned under (i); and/or (iii) companies with legal personality of which any of the aforementioned persons under (i) and (ii) are a member of the board or supervisory board or shareholder.
- 6.5 In case of a conflict of interest in respect of a member of the Board, the member must report such conflict to the Board. That member of the Board shall subsequently not take part in the discussions and resolutions in respect of thereof.

**Article 7. Board: Decision-making Process.**

- 7.1 Board meetings are to be held as often as the chairperson or at least two of the other Board members, or the secretary on behalf of the chairperson or such Board members, convene(s), but at least once a year.
- 7.2 The chairperson or at least two of the other Board members, or the secretary on behalf of the chairperson or such Board members, is/are entitled to convene a Board meeting and is/are required to do so in writing stating the matters to be dealt with, at least seven days in advance. If the meeting is not convened in writing, or if matters are dealt with which were not referred to when the meeting was convened, or if the meeting is convened with less than seven day's notice, valid resolutions of the Board may only be adopted in a meeting, if in such meeting all Board members then in office are present or represented and none of the Board members then opposes to adopting resolutions.
- 7.3 Board meetings are to be held at the location determined by the party that convenes the meeting.
- 7.4 The meetings may be attended by Board members and those permitted by the Board members attending the meeting. A Board member may be represented at a meeting by another Board member authorised in writing. In these Articles

of Association, in writing means by letter, by telecopier, by e-mail or by message which is transmitted via any other current means of communication and which can be received in the written form provided that the identity of the sender can be sufficiently established. A Board member can represent no more than one other Board member at a meeting.

- 7.5 Each Board member may cast one vote. Unless determined otherwise in these Articles of Association, all resolutions shall be adopted by an absolute majority of the votes cast. Blank and invalid votes shall be regarded as having not been cast. In the event of a tie in voting when electing persons, it shall be decided by lot who is elected; in the event of a tie in other voting, the proposal is thus rejected.
- 7.6 Resolutions can only be adopted in a meeting where at least half of the members of the Board are present, with due observance of the provisions of Article 6.4.
- 7.7 All votes shall be taken orally. However, the chairperson shall be entitled to decide that a vote is to be taken by secret ballot. In cases of votes on persons, each Board member present at the meeting shall be entitled to demand a vote by secret ballot. Voting by secret ballot shall take place by means of unsigned ballot papers.
- 7.8 The meetings shall be led by the chairperson of the Board; in his or her absence the meeting shall itself provide leadership. Until that moment, the acting chairperson shall be the eldest Board member present at the meeting.
- 7.9 A person designated by the chairperson of the meeting for that purpose shall take minutes of the proceedings at the meeting. The minutes shall be adopted by the Board at the same meeting or at the next. Evidencing the adoption, the minutes shall be signed by the chairperson and the secretary of the meeting at which they are adopted.
- 7.10 Board resolutions may also be adopted in a manner other than at a meeting, in writing or otherwise, provided the proposal concerned is submitted to all Board members then in office and none of them objects to the relevant manner of adopting resolutions. A report shall be prepared by the chairperson of the Board, or a Board member appointed by the chairperson, on a resolution adopted other than at a meeting which is not adopted in writing, and such report shall be signed by the chairperson and one of the other Board members. Adoption of resolutions in writing shall be effected by written statements from all Board members then in office.

#### **Article 8. Board of Managing Directors**

- 8.1 The Board may establish a board of managing directors, consisting of one or more persons. The members of the board of managing directors are appointed by the Board and may be suspended or dismissed by the Board.
- 8.2 The board of managing directors is in charge of the execution of the policy and resolutions of the Board. The Board may give the board of managing directors binding instructions in respect thereof. The Board is authorised to delegate the

daily management and administration of the Foundation to the board of managing directors.

- 8.3 The members of the board of managing directors have, as a rule, access to the meetings of the Board and each have an advisory vote, unless the Board resolves to hold a meeting without the presence of the members of the board of managing directors.
- 8.4 The members of the board of managing directors act under the supervision of the Board and are accountable for their actions to the Board.
- 8.5 The Board may grant the members of the board of managing directors full or limited power to represent the Foundation. Each of them shall represent the Foundation in accordance with and within the limits of such power. The authority of a member of the board of managing directors to represent the Foundation does not cover matters where a conflict of interest exists between the Foundation and the member of the board of managing directors concerned.

**Article 9. Financial Year and Annual Accounts.**

- 9.1 The Foundation's financial year shall coincide with the calendar year.
- 9.2 The Board shall keep records pertaining to the financial position and the activities of the Foundation, in conformity with the requirements ensuing from the activities of the Foundation. The Board shall keep these books, documents and other data carriers belonging thereto, in such a way that the Foundation's rights and obligations can be ascertained therefrom at all times.
- 9.3 Before the end of the financial year the Board shall draw up a budget for the next financial year. The budget must contain an investment plan. The Board shall draft the budget in accordance with the Directive Reporting Fundraising Institutions (*Richtlijn Verslaggeving Fondsenwervende Instellingen*).
- 9.4 Every year the Board shall prepare and make available on paper an annual account and an annual report, within six months of the end of the relevant financial year. The Foundation shall draft its annual account and annual report in accordance with the Directive Reporting Fundraising Institutions (*Richtlijn Verslaggeving Fondsenwervende Instellingen*).
- 9.5 Before proceeding to adopt the documents referred to in Article 9.4 hereof, the Board may have them examined by an accountant of the Board's choice. The latter shall report to the Board on the result of his examination.
- 9.6 The Board is obliged to keep the books, documents and other data carriers referred to in this Article for a period of seven years, without prejudice to the provisions in Article 9.7 hereof.
- 9.7 The data kept on data carriers, with the exception of the balance sheet and the profit and loss account put on paper, can be transferred for safe-keeping to other data carriers, provided that the transfer involves an exact and complete reproduction of the relevant data and provided that the data are available at all times during the entire term in which the data must be preserved and that the data can be made legible within a reasonable period of time.

**Article 10. Advisory Council and Commission of Recommendation.**

- 10.1 The Board may establish an advisory council to support the Board. The Board is authorised to dissolve the advisory council.
- 10.2 The advisory council renders the Board with advice on the projects referred to in Article 2 and guarantees the academic and educational aspects of these projects.
- 10.3 The advisory council shall consist of at least three persons to be appointed by the Board.
- 10.4 The members of the advisory council shall be appointed, suspended and dismissed by the Board.
- 10.5 The Board may draw up a regulation laying down the duties, organisation and decision-making process of the advisory council.
- 10.6 The Board may furthermore establish a commission of recommendation. The Board is authorised to dissolve the commission of recommendation.
- 10.7 The members of the commission of recommendation lend their name to the Foundation in support of the fundraising and support the Board in its fundraising efforts.
- 10.8 The members of the commission of recommendation shall be appointed, suspended and dismissed by the Board.
- 10.9 The Board may draw up a regulation laying down the duties, organisation and decision-making process of the commission of recommendation.

#### **Article 11. Regulations**

- 11.1 The Board may draw up several regulations in which matters are included which in the opinion of the Board require further regulation.
- 11.2 The regulations may not be in conflict with the provisions of these Articles of Association.
- 11.3 The Board is authorised to amend or terminate the regulations.

#### **Article 12. Amendment of the Articles of Association.**

- 12.1 The Board shall be authorised to amend the Articles of Association.
- 12.2 A resolution by the Board to amend these Articles of Association shall require a two thirds majority of the votes cast in a meeting in which all Board members are present or represented. If, at a meeting in which a resolution to amend these Articles of Association is to be discussed, not all Board members are present or represented, a second meeting shall be called to be held no earlier than two weeks and no later than four weeks after the first meeting. At such second meeting, irrespective of the number of Board members present or represented, a valid resolution with respect to the proposal presented for discussion at the first meeting may be adopted, provided that the Board does so with a two thirds majority of the votes cast
- 12.3 A copy of the proposal, containing the verbatim text of the proposed amendment, shall be attached to the notice of the meeting in which an amendment of the Articles of Association is to be discussed.
- 12.4 An amendment of the Articles of Association shall only take effect after a notarial deed thereof has been drawn up. Each Board member severally shall be authorised to have said deed executed.

**Article 13. Dissolution.**

- 13.1 The Board is authorised to dissolve the Foundation.
- 13.2 Article 12.2 of these Articles of Association shall apply by analogy to a Board resolution to dissolve the Foundation.
- 13.3 After dissolution, the liquidation shall be effected by the Board. The Board can decide to appoint other persons as liquidator.
- 13.4 The surplus after liquidation, if any, of the Foundation shall accrue to the benefit of the Society of Malawi in Limbe, Malawi, or to any other institution or charity as determined by the Board in accordance with the objects of the Foundation.
- 13.5 After completion of the liquidation, the books, records and other data carriers of the dissolved foundation shall remain in the custody of the person designated for that purpose by the liquidators, for the period prescribed by law.
- 13.6 In addition, the liquidation shall be subject to the relevant provisions of Book 2, Title 1, of the Dutch Civil Code.

**Article 14. Transitional provision.**

The Foundation's first financial year shall end on the thirty-first day of December two thousand and six. This article shall cease to exist after the end of the first financial year.

**Finally, the person appearing declared:**

that the following persons shall, at incorporation, be appointed as the first Board members of the Foundation and shall hold the office referred to after their name:

1. mr. Johannes Antonius Welling, residing at Diependaalsedrift 32, 1213 CR Hilversum, the Netherlands, born in Utrecht, the Netherlands on ten November nineteen hundred and forty-one (*chairperson*);
2. mr. Henricus Wilhelmus Bakker, residing at Maasbandijk 72, 6606 KE Niftrik, the Netherlands born in Helenaveem Deurne, the Netherlands on twenty-nine August nineteen hundred and forty-one (*secretary*);
3. Mrs. Lilian Francis Antoinette Steffens, aforementioned (*treasurer*);
4. Mr. Josephus Gerardus Maria Jacobs, residing at Diepevoorde 31-12, 6605 GR Wijchen, the Netherlands, born in Tilburg, the Netherlands, on nine November nineteen hundred and forty; and
5. Mrs. Kim Spijker, residing at Meeuwenlaan 319-II, 1022 AL Amsterdam, the Netherlands, born in Amsterdam, the Netherlands on sixteen August nineteen hundred and seventy-seven.