MERCY PARTNERS

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Partners in Mission

A Handbook for Directors

Mercy Partners
Partners in
Mission

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"… we should keep in mind that we are dealing with goods which are considered to belong to the Church through one of its entities. For this reason, persons who are involved in their administration, even in the civil domain, are also acting on behalf of the Church.

This calls for good dialogue and understanding on both parts so that the overriding canonical principles relating to temporal goods also find their expression in the corresponding civil structures and policies."

– Morrisey & Martin, 2017, p.16

Foreword

Mercy Partners Council is pleased to provide you with this document, the first in a series designed to enrich the partnership between Mercy Partners and the leaders and directors of our ministries.

Leadership of a Catholic organisation is an invitation to become a partner in mission, to ensure not just due diligence from a civil governance perspective but also that the ministry is operating within the embrace of Church law and expectations. Pope Francis calls on all of those working in Catholic ministries to be 'more than mere administrators…' being '… in a permanent state of mission' (*Evangelli Gaudium*).

What 'being in a permanent state of mission' looks like in the complex area of financial and ecclesiastical goods is the subject of this booklet.

While many leaders come to our ministries as experts in their particular fields, expertise in the canonical obligations that apply to ministries that operate in the name of the Church under the sponsorship of a Public Juridic Person (PJP) may not be as strong. In his reflection on Catholic corporate governance, Peter Pearce makes the following observation:

> "… good faith in governance practice in a Catholic organisation requires as a prerequisite a level of knowledge of matters Catholic sufficient to enable the practitioner to participate in the making of sound Catholic decisions and to check that the organisation being governed is conducting its affairs in an appropriate manner…".

This publication offers leaders an overview of information concerning canon law expectations in the area of property and finance. The resource recognises that ministries sponsored by a PJP have clear responsibilities under Canon Law regarding property and Mercy Partners, as the PJP, also has reserve powers in this area. A publication such as this is unable to address every particular situation in this area, and cannot be a 'one size fits all' given the complexity within the ministries of Mercy Partners.

It is hoped that this information will be of great practical assistance to those in our ministries who have been given the trust and responsibility of safeguarding Church assets critical for the furtherance of God's mission. Indeed, foundational to all of the canonical obligations with regard to property and finance (temporal goods), is the understanding that all assets in ministries exist to support the mission.

This publication is therefore a guide and a tool. It is not intended to replace the frequent discussions and interactions between Mercy Partners and its ministries that must continue to take place around effective governance. These conversations are critical as we are partners collaborating in the mission of God, as *Mercy Partners Theological Framework* reminds us:

> *"... because they are partners their relationships rely more on the formative value of friendship and collective vision than on inflexible institutional structures."*
>
> – *Mercy Partners Theological Framework*, p. 3

PART 1

Introduction to Mercy Partners

Mercy Partners was established as a Public Juridic Person in the Church with Vatican approval in 2008.

It was founded by the four Mercy congregations in Queensland (Cairns, Townsville, Rockhampton and Brisbane) to govern their Catholic ministries in the fields of education, health, aged care and social services.

Mercy Partners has welcomed ministries from the Presentation and Franciscan traditions and has evolved as a dynamic and proactive communion of charisms and ministries.

A ministry is defined as a work of the Church whose key activities further God's mission. Ministries in Mercy Partners are also incorporated in civil law and require competent and accountable administration consistent with Australian law.

Mercy Partners was established to:

- sponsor ministries in the name of the Catholic Church
- respond compassionately and creatively to existing and emerging formation needs within ministries
- advocate in the public forum on behalf of the poor and disadvantaged
- provide pathways in the Catholic Church for canonical and civil leadership of ministries by lay people.

Mercy Partners is a founding member of the Australian Association of Ministerial PJPs which was established in 2017.

The diagram Canonical and Civil Relationships (see page 4) illustrates the relationship between Mercy Partners and its ministries under canon law, highlighting reporting accountability and the centrality of mission in the partnership between a PJP and its ministries.

MERCY PARTNERS

Canonical and Civil Relationships

MERCY PARTNERS COUNCIL AND MINISTRIES

Holy See

Congregation for Institutes of
Consecrated Life and
Societies of Apostolic Life
(CICLSAL)

Canon Law

Statutes

Mission

MERCY PARTNERS

Mercy Partners Constitution

Mercy Partners has inherited
the incorporated ministries
of the Religious Institutes

Ministry Constitution

PURPOSES/OBJECTS

Same as those in
Mercy Partners

POWERS OF THE MEMBER

Same as those in Mercy
Partners Statutes and
Constitution

Shared Mission to the World

To contribute to the emergence of a world
where the healing, liberating and life-giving
mercy of God is experienced

Shared Accountability for the Mission

Ministries report to Mercy Partners

Mercy Partners reports to the Holy See

"The Church's authorisation of Mercy Partners as a PJP gives its activities a unique share in the authority of the Church and its mission."

– *Mercy Partners Theological Framework* p.12

Canonical stewardship, as exercised by Mercy Partners and its ministry leaders, is not simply the management of assets. It is a responsibility which demands transparency, diligence, collaboration, mission awareness and most of all discernment of where needs may call ministries into the future.

As Morrisey and Martin (2017) remind us, "When a Church entity wishes to carry out its mission, there must be prudent assessment of the needs and of the means necessary to do so … provision must be made for tomorrow …" (pp. 22-23).

As partners in mission, Mercy Partners invites the leaders of its ministries to collaborate in the administration of those assets which are critical to the continuation of God's mission.

PART 2

What are Ecclesiastical Goods in the Church?

Each of the ministries of Mercy Partners is a work of the Church with incorporated civil status. This means that each ministry owns its land, buildings and other assets under civil law. These assets are also ecclesiastical goods because they are part of God's mission – enacted through the work of the ministries.

'**Ecclesiastical goods'** refers to all of the assets of a ministry which enable it to carry out God's mission. Canon law refers to these assets as temporal goods. These goods can be movable or immovable and can include property, buildings, cash or other significant assets. Morrisey and Martin (2017) make a clear distinction between ecclesiastical goods and resources received from government or public sources. These resources are for specific activities, are separately audited and do not relate directly to the mission of a ministry.

Stable patrimony refers to those temporal goods which give the ministry the stability to carry out the mission in the long term. Stable patrimony therefore can include lands and buildings as well as items of cultural or historical significance, long term investments and funds restricted for particular purposes.

Mercy Partners, as the canonical sponsor, is the custodian of the ecclesiastical goods of its ministries. This is because in canon law, **only a PJP is able to own and administer ecclesiastical goods**.

Since there is a wide diversity of ministries within Mercy Partners, there can be no set lists of what constitutes ecclesiastical goods including stable patrimony. For this reason, Mercy Partners seeks to work in partnership with ministries to ensure administrative practices in relation to assets and finances are transparent, in line with canonical principles and mission focused.

"Mercy Partners goes forth in the name of the people of God, and its ministries carry this added dimension of ecclesial identity, meaning and vocation."

– *Mercy Partners Theological Framework* p.13

IN SUMMARY

- ministry assets (temporal goods including stable patrimony) are ecclesiastical goods as they are used in carrying out the mission
- their governance is subject to Canon Law
- boards and CEOs/Principals are responsible for the management of ministry assets
- it is the responsibility of the Council of Mercy Partners, acting in partnership with ministries, to protect the ecclesiastical goods of that ministry.

PART 3

How Does Canon Law Define Administration of Ecclesiastical Goods?

As a PJP, Mercy Partners is referred to as the '**canonical sponsor**' of its ministries.

In this role, Mercy Partners is bound by canon law in its expectations of ministries in their administration of ecclesiastical goods.

Canon law identifies specific types of administration of ecclesiastical goods: acts of ordinary administration, acts of extraordinary administration and acts of major importance.

1. ACTS OF ORDINARY ADMINISTRATION

Acts of ordinary administration are transactions and expenditures which are considered to be necessary for the daily and routine operation and maintenance of the ministry and its property, or the work and mission of the ministry. They would include the following:

- collection of debts, rents and interest
- maintenance of buildings and equipment
- payment of salaries and taxes
- acceptance of ordinary donations (where no conditions are attached)
- repairs of buildings and other assets.

Ordinary administration is the responsibility of each ministry board and leadership team.

"The building of partnerships cultivates a diversity of gifts and charisms embracing lay leadership and creatively responds to the changing needs of many ministries."

– *Mercy Partners Theological Framework* p. 3

2. ACTS OF EXTRAORDINARY ADMINISTRATION

Acts of extraordinary administration may require the approval of Mercy Partners in some circumstances. In accordance with Canon Law, the acts listed below may be deemed acts of extraordinary administration:

- expenditure over limits set from time to time by the Member (Mercy Partners) according to the schedule provided to each ministry
- purchase of land or immovable goods (acquisitions) over a certain limit
- formation of any civil corporation or subsidiary
- joint ventures or affiliations with other organisations, including church organisations
- acceptance or refusal of bequests to which are attached some qualifying obligations or conditions which could put the ministry at risk – financially, ethically or reputationally
- major building repairs or alterations
- court procedures which affect asset sustainability
- major changes to the purpose and usage of the ministry property.

Extraordinary administration involves responsibilities which are enacted in partnership with Mercy Partners.

3. ACTS OF MAJOR IMPORTANCE

In rare circumstances, situations arise which affect the long term viability of a ministry or all ministries. These circumstances are rare and often related to financial or legal issues which threaten the capacity of ministries to fulfill the mission. In these cases, Mercy Partners will work collaboratively with ministry leaders to respond to situations ensuring that the principle of subsidiarity is respected.

The next section of the booklet looks at each of the areas in which Acts of Extraordinary Administration are required.

Which Situations Require Approval by Mercy Partners?

The following section provides further information on each of the Acts of Extraordinary Administration which involve Mercy Partners as the PJP. This information will help guide Boards in ascertaining when they may need to seek the approval of Mercy Partners Council.

For each of the following actions Mercy Partners requires documentation* which may include:

> detailed description of the transaction, alienation, closure, acquisition, borrowing etc.
> evidence of due diligence on the part of the company: business case, viability analysis
> evidence of Board consideration of the action: minutes or letter
> financial details including ability to repay loans or the destination of monies gained by borrowing, lease or alienation
> a timeline for completion of the proposed action
> details of the impact of the proposed action on those served by the ministry and the mission in general
> evidence of stakeholder consultation.

* *in some instances the permission of the local Bishop will be required.*

ACQUISITIONS

Mercy Partners Council reserves the power to approve acquisitions. Acquisitions are usually by purchase, gift or donation. Some gifts and donations are given by donors with conditions and their acceptance may need to be approved by Mercy Partners to ensure that these conditions do not put at risk the viability or security of Mercy Partners or the ministry.

CLOSURES

Mercy Partners is required to approve the closure of any institution or major industry or work conducted by a ministry. Closures may be advisable for a number of reasons including the work of the institution being no longer required or the continuation of the service being affected by changes in government regulations or financial constraints.

Suggested criteria to determine whether a decision involves a major industry include:

> Is the institution or work being operated for a charitable purpose?
> Was the purpose of the establishment of the institution or work originally for a charitable purpose?
> Does the need or a related need still exist?
> Does the institution or work have a workforce engaged in mission related activities?

ALIENATIONS

Alienation is a transfer of ownership of an ecclesiastical property. This is usually put into effect by sale, gift or exchange. The leasing of property usually is included in the 'alienation clause' although a lease is not technically an alienation.

ALIENATION LIMITS

Approved amounts for Alienation of Temporal Goods of the Church (Canon 1292 1) are indexed at 30 June each year by the Australian Catholic Bishops Conference (ACBC) in accordance with the annual rate of inflation (CPI). Mercy Partners is required by canon law to observe the limits published by the ACBC. There will be instances where the size of a ministry makes it impractical to use the limits set by the ACBC and Mercy Partners will work in consultation with these ministries on alienation details.

LEASES AND LICENCES

Even though there is not a transfer of ownership when leasing one's property to another party, control of the property is temporarily lost. Therefore, a lengthy lease situation may constitute an alienation. Mercy Partners may, in most cases, delegate the authority for long-term leases to the ministry Board/CEO, particularly where the lease supports the ideals of the Catholic Church and there are no conflicts of interest.

BORROWINGS

As the canonical sponsor and Member of the Company of each ministry, Mercy Partners reserves the power to approve the borrowings of a ministry up to a certain amount set by Mercy Partners Council.

Amounts beyond the limits set by Mercy Partners Council may require Vatican approval. This is because borrowings, whether secured or unsecured, may constitute a risk to an organisation and stable patrimony as well as reducing the funds available for mission.

In large ministries, some borrowing may be considered operational and necessary to achieve the best outcomes from investments and can be considered ordinary administration.

Capital borrowing or long term financial commitments for the purpose of expanding the mission by providing additional facilities needs to be approved by Mercy Partners.

Mercy Partners will advise whether Vatican approval is required and request the appropriate documentation. **As Vatican approval can take up to three months, proposed borrowings should be flagged with Mercy Partners Council early enough for such documentation to be prepared.**

ESTABLISHMENT OF SUBSIDIARY COMPANIES

Some ministry companies have subsidiary companies which provide a service to the mission of the ministry. Subsidiary companies may be established with the approval of Mercy Partners Council. Similarly, companies may enter into joint ventures and other corporate affiliations with other companies in order to expand the mission.

In order to approve the establishment of a subsidiary company or a joint venture, Mercy Partners Council requires full disclosure of the financial and commercial arrangements, potential conflicts of interest as well as assurances of the alignment of the business or partner with the mission.

In addition the following details will be required:

- the dissolution and/or liquidation of this Company or any Corporation of which this Company is the controlling shareholder or member
- the sale, transfer, lease, alienation, sub-lease, licence, of the real property of the Company or any corporation of which the Company is the controlling shareholder or member
- for this Company, or for any corporation for which this Company is the controlling shareholder or member, the acquisition of land, buildings or assets
- to amend or repeal any clauses of this Constitution or of the Constitution of any corporation of and in which this Company is the controlling shareholder or member.

In some cases the permission of the local bishop may be required.

The reason for seeking approval of Mercy Partners in establishing subsidiary companies is that a ministry company is unable to sponsor a work of the Church. This is reserved to a PJP, which is responsible for the Catholic identity and ecclesiastical goods of the ministry.

JOINT VENTURES

Joint ventures, or other corporate affiliations relating to a substantial component of the business of the company, require the approval of Mercy Partners because any joint venture brings the possibility of risks both to the ministry and Mercy Partners (as a whole).

This risk could be financial or something more intangible, like reputational risk or compromise to the brand, good name of Mercy Partners or the Catholicity of the ministry. This is particularly pertinent where a joint venture is with a secular organisation.

One of the issues here is what constitutes 'relating to a substantial component of the business of the Company'. Essentially, the business of the company is the mission – health, education, community services. These are the works of the Church and the reason the ministry and Mercy Partners exist.

Joint ventures and corporate affiliations should therefore enhance the mission, and this could include ventures which will contribute to the resources or longevity of the mission. Joint ventures however must not be such that they could compromise the position of the Church.

IN SUMMARY

The following actions may constitute Acts of Extraordinary Administration and require the formal approval of the Canonical Sponsor – Mercy Partners:

> acquisitions of property or assets by purchase or gift
> closure of ministry works or organisations
> alienation of property including in some cases leasing arrangements
> borrowings over limits set by the ACBC
> establishment of subsidiary companies
> joint ventures.

"Mercy Partners pursues its mission in faithfulness to Christ and his body, especially the poor. Its authorisation makes it accountable then both to the Holy See … and to all the people who serve and are served by its ministries …"

– *Mercy Partners Theological Framework*, p. 12

In their publication, *Temporal Goods at the Service of the Mission of Ministerial Juridic Persons* (2017), Morrisey and Martin further clarify the matters reserved to the canonical sponsor:

> establishing or changing the mission and/or philosophical direction of the corporation (which entails approvals of changes to mission statements)
> amending of corporate charters and bylaws
> ***being part of the process*** of appointing and removal of board directors of the corporation or of intermediate boards ***and participation in and approval of*** the appointment of the CEO ***or equivalent***
> leasing, selling or encumbering corporate real estate by contracting debts, for example
> merging or dissolving the corporation and distributing corporate assets
> approving capital or operating budgets or both
> requiring a certified financial audit (CHAUSA 2017 – *amended*).

PART 4

What are the Responsibilities of Ministries as Administrators of Ecclesiastical Goods?

In Canon Law, administrators have the responsibility to act as a good householder. These responsibilities are similar to the fiduciary responsibilities required by Corporations Law and ACNC legislation.

Canon 1282 states that 'All persons, whether clerics or laity, who lawfully take part in the administration of ecclesiastical goods, are bound to fulfil their duty in the name of the Church, in accordance with the law'.

Therefore, Mercy Partners expects its ministries to meet the responsibilities of administrating ecclesiastical goods as outlined on page 17.

DETAILS	CANON REF
To act within the limits and manner of ordinary administration, except where Mercy Partners approval requires otherwise – without permission, the act is invalid in canon law	Canon 1281 §1
To arrange adequate insurance	Canon 1284 §2 1
To ensure that all relevant civil law is complied with in relation to property	Canon 1284 §2 2
To attend carefully to the wishes of the founder or donor of money or goods to the ministry	Canon 1284 §2
At the proper time, to make repayments of principal and interest payments on loans	Canon 1284 §2 5
To invest surplus monies for the benefit of the ministry	Canon 1284 §2 6
To keep accurate records of income and expenditure	Canon 1284 §2 7
To draw up a financial statement to be audited each year	Canon 1284 §2 8
To submit each year the audited financial statement to Mercy Partners	Canon 1287
To securely preserve and archive records of transactions related to ecclesiastical goods	Canon 1284 §2 9
To not institute or contest proceedings in a civil court in the name of Mercy Partners without first obtaining the written permission of Mercy Partners Council *Note: Mercy Partners ministries are often complex organisations which are incorporated in civil law. Mercy Partners has delegated this power to most of the boards. It is incumbent on boards, however, to keep Mercy Partners informed of major litigation – particularly where a loss of reputation or property, or cessation of a ministry work could result.*	Canon 1291

What are the Administrative Responsibilities Related to Ecclesial Goods and Stable Patrimony?

Canon 1283 states that administrators 'are to draw up a clear and accurate inventory, to be signed by themselves, of all immovable goods, of those movable goods which are precious or of a high cultural value, and of all other goods, with a description and an estimate of their value' and that 'a copy of this inventory is to be kept in the administration office'.

ESTABLISHING AN INVENTORY

Mercy Partners Council will work in partnership with each ministry to establish an inventory of stable patrimony.

Property and funds that are held for operating the business of the ministry are considered free or liquid and do not require a designation as stable.

The inventory of stable patrimony should include:

1. real estate (land and buildings acquired with the intention of long term retention)
2. significant cultural or spiritual assets such as fine furniture and books, cultural and precious objects
3. some long-term investments in securities
4. some restricted funds set aside for a specific purpose.

The reason for such an inventory is to ensure the protection and prevention of loss to the Church of ecclesiastical goods.

"Living its mission 'in the name of the Church', Mercy Partners goes forth in the name of the people of God, and its ministries carry this added dimension of ecclesial identity, meaning and vocation."

– *Mercy Partners Theological Framework*, p. 13

IN SUMMARY

> all ministries are required to draw up an inventory of ecclesiastical goods
> Mercy Partners is required to develop processes for the Extraordinary Administration of Ecclesiastical Goods and to ensure these are readily available to ministries
> Mercy Partners, as canonical sponsor, is responsible for ensuring Vatican approval is sought (when necessary) for major changes to ministry assets through closure, acquisition, establishment of subsidiaries or joint ventures.

References

Morrisey, M. Martin, P. (2017) *Temporal Goods at the Service of Mission of Ministerial Juridic Persons*. Published by CHAUSA, Washington

COMPASSION JUSTICE RESPECT HOPE

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