

**REPUBLIC OF SOUTH AFRICA**

**COMPANIES ACT, 1973**

**MEMORANDUM OF INCORPORATION**

**OF A NON-PROFIT COMPANY**

[Schedule 1]

**Registration Number of Company**

**THE JEWELLERY COUNCIL OF SOUTH AFRICA**

**(A Non-profit Company)**

Financial Year end: The last day of DECEMBER.

## **PRELIMINARY**

The standard Memorandum of Incorporation as contained in Schedule 1 to the Companies Act, 2008, shall be applicable to this Company and the Memorandum of Incorporation of this Company shall be as set out hereunder.

### **1. INTERPRETATION**

1.1 In this Memorandum, unless the context shall clearly otherwise indicate:

1.1.1 “the Act” means the Companies Act, No. 71 of 2008, as amended from time to time;

1.1.2 “this Memo” means the Memorandum of Incorporation as originally framed or as altered from time to time by special resolution;

1.1.3 “the Board” means the Board of Directors of the Company for the time being;

1.1.4 “the Company” means THE JEWELLERY COUNCIL OF SOUTH AFRICA (A Non-Profit Company));

1.1.5 “Company Secretary” means a permanent employee of the company tasked with such administrative affairs as delegated by the Chief Executive Officer and/or Executive Committee from time to time;

1.1.6 “the Directors” means the directors of the Company for the time being;

1.1.7 “Duly Certified” in relation to copies, means a copy certified by an appropriate Public Officer or Notary Public; or such other form of certification as the directors may from time to time in their sole discretion accept;

- 1.1.8 “the Non-Profit Organisations Act” means the Non-Profit Organisations Act No 71 of 1997, as amended from time to time, and shall include the Regulations promulgated thereunder;
- 1.1.9 “Month” means calendar month;
- 1.1.10 “the Office” means the registered office of the Company;
- 1.1.11 “Service Member” shall mean any person or entity who qualifies in the sole discretion of the Board of Directors to become a member in this category as determined from time to time and who shall neither be subjected to discipline nor arbitrations by the Company.
- 1.2 Words and expressions contained in this Memorandum shall bear the same meaning *mutatis mutandis* as are assigned to them by the Act, as amended from time to time.
- 1.3 Expressions with reference to writing shall be construed as including reference to printing, lithography, photographs and other modes of representing or reproducing words in visible form.
- 1.4 Words importing the singular shall include the plural, words importing the masculine, feminine or neuter shall include the others of such genders, and words importing persons shall include bodies corporate, and *vice versa* in each instance.

## **2. DIVISIONS**

- 2.1 The Company shall be divided into different divisions which shall inter alia include:
- 2.1.1 The Jewellery Manufacturers Association of South Africa;

- 2.1.2 The Jewellery and Watch Distributors Association;
  - 2.1.3 The Jewellers Association of South Africa;
  - 2.1.4 Service Members; and
  - 2.1.5 Any other divisions that may be created and/or recognised and that may be included from time to time by the Board and the Executive Committee of the Company.
- 2.2 With due regard to the divisions, and its powers as set out hereunder, the divisions shall be subjected to the sole authority of the Board of Directors and Executive Committee of the Company and whose recommendation and directions shall be final and binding on the division(s), as the case may be.
- 2.3 Each division shall be governed by its own terms of reference as agreed to by the Board of the Company and in conjunction with the Executive of each of the respective divisions and governed by the Executive of each of the respective divisions.
- 2.4 Each division shall have the duty to report to the Board of the Directors as well as the Executive Committee of the Company at any scheduled meeting and shall have the right to represent its constituency at any Board, Council or anything of the like with due recognition from the Company.
- 2.5 The Chairman of each of the respective divisions shall be represented on the Board of the Company as well as the Executive Committee of the Company and they shall be considered to be representative of the respective divisions. Each representative shall be afforded the same voting rights.
- 2.6 Any of the office bearers of the Company's Chief Executive Officer shall have the right to attend all meetings of each division.

- 2.7 All matters relating to the administration and finance of each of the divisions shall be dealt with by the Chief Executive Officer and any other nominated representative(s) of the Company and all matters incidental thereto shall be dealt with by them and such decision(s) shall be final and binding on all divisions.
- 2.8 The Chief Executive Officer of the Company shall represent any and all divisions of the Company when dealing with any third party.

### **3. MEMBERSHIP**

- 3.1 The members of the Company shall be the persons whose names are subscribed to the Memorandum of Incorporation of the Company and constituent bodies which are those organisations, associations, groups and individuals representing interests concerned with the mining, manufacture, distribution and sale of any commodity comprising precious metals, diamonds and gem stones, semi precious stones, watches and clocks, jewellery or other similar items as well as with education or training with regard to such interests, who have agreed in writing to become members of the Company subject to the terms of the Memorandum of Incorporation of the Company and whose names have been entered in the Company's register of members as provided for in Schedule 1 section 9 of the Act.
- 3.2 Any individual or other legal persona who is involved in such interests and who does not belong to a constituent body or division, may apply for membership of the Company.

- 3.3 Application to become a member shall be lodged in writing with the Company and shall furthermore be accompanied with a duly completed membership form and any other documents that may be requested by the Board of Directors of the Company.
- 3.4 Any application for membership as received from any of the divisions of the Company shall be considered by the Executive Committee in its sole discretion at its first meeting after receipt and acceptance or otherwise shall be by affirmative vote of a majority of the members of the Executive Committee present. The Executive Committee's decision shall be final. Such a vote may be either made electronically or otherwise agreed to by the Executive Committee.

The names of any such accepted members shall be entered in the Company's register of members as provided for in Schedule 1, Section 9 of the Act and accepted members shall be compelled to declare an interest in more than one jewellery store and under these circumstances shall submit an application for membership in respect of each such store to the Association.

In the event that any member of the Company acquiring an interest in any jewellery store which is not a member of the Company, it shall be incumbent on the member to submit an application for membership in respect of such jewellery store to the Company within 30 days of the date on which the member acquires such interest.

#### **4. MEMBERSHIP FEES**

- 4.1 The annual membership fee as well as levies payable by each member shall be determined by the Company in a duly Constituted Board meeting, provided that:

4.1.1 notice of any proposed increase in such fee or the imposition of a levy appear on the agenda of the Board meeting;

4.1.2 a levy may only be imposed in terms of a resolution passed by two-thirds majority of members present at the Board meeting.

## **5. NUMBER OF MEMBERS**

The number of members shall not be limited.

## **6. RIGHTS AND OBLIGATIONS OF MEMBERS**

6.1 Subject to the rights of membership as prescribed by statute and by this Memorandum, membership shall confer upon each individual member the following rights:

6.1.1 subject to the provisions of clause 15 below, the right to determine the number of directors of the Company and to nominate and elect directors of the Company from time to time;

6.1.2 the right to receive copies of the annual financial statements of the Company;

6.1.3 the right to receive notice of, attend, speak and vote at general meetings of the Company.

6.2 Anything to the contrary herein contained or implied notwithstanding, cessation of membership shall in no way release a member from any obligation undertaken by him or her prior to the cessation of membership in terms of either:

6.2.1 the provisions of clause 7.2 of the Memorandum of Incorporation of the Company; or

6.2.2 any further or ancillary guarantee, commitment or obligation which such member may have undertaken.

## **7. CESSATION OF MEMBERSHIP**

Membership of the Company shall cease:

7.1 upon receipt of the Company at the Office of notice in writing to this effect from the member concerned;

7.2 upon the issue of a final order of sequestration or liquidation of the member concerned;

7.3 in the case of a member who is a natural person, upon the death of such member, or upon such member being declared insane or incapable of managing his or her affairs;

7.4 where the Board resolves that a member has materially contravened any of the aims, objects or resolutions of the Company; provided that such member shall have the right to appeal against the decision of the Board to the members of the Company in general meeting.

## **8. REGISTER OF MEMBERS**

The Company shall maintain at its Office a register of members of the Company as provided in section 24(4) read with Schedule 1, Section 9 of the Act and such Register shall be open to inspection, as provided in Section 25 of the Act.



## **9. GENERAL MEETINGS**

- 9.1 An annual general meeting shall be held once in every year not later than the end of September of each year at such time and place as may be prescribed by the Company in general meeting, or by the directors, subject always to the provisions of the Act; provided that no more than 15 (Fifteen) months shall elapse between the date of one annual general meeting and that of the next, and that an annual general meeting shall be held within 9 (Nine) months of the expiration of the financial year of the Company.
- 9.2 Other general meetings shall be held at such time and place as the directors shall appoint, or at such time and place as is determined if the meetings are convened under sections 73 and 74 of the Act.

## **10. NOTICE OF GENERAL MEETINGS**

- 10.1 An annual general meeting and, subject to the provisions of sections 61 of the Act, a meeting called for the passing of a special resolution shall be called by at least 15 (Fifteen) clear days' notice in writing, and a general meeting of the Company, other than an annual general meeting or a meeting for the passing of a special resolution, shall be called by at least 10 (Ten) clear days' notice in writing.
- 10.2 The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in a manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under this Memorandum, entitled to receive such notices from the

Company, provided that a meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in this Memorandum, be deemed to have been duly called if it is so agreed by a majority in number of the members having a right to attend and vote at the meeting and who hold not less than 51 % (Fifty One Percentum) of the total voting rights of all the members.

## **11. PROCEEDINGS AT GENERAL MEETINGS**

- 11.1 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements, the election of directors and the appointment of an auditor, and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.
- 11.2 No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. Save as herein otherwise provided and subject to the provisions of the Act, a minimum of 10 (Ten) members personally present at such meeting shall constitute a quorum.).
- 11.3 If within half an hour from the time appointed for a meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to such date as the Chairperson of the meeting may decide provided that it shall be within 7 (Seven) days of the original meeting; and if at such adjourned meeting a quorum is still not present within half an hour after the time appointed for such meeting, the members present shall constitute a quorum.

- 11.4 Where a meeting has been adjourned as aforesaid, the Company shall, upon a date not later than 3 (Three) days after the adjournment, publish in a newspaper circulating in the province where the registered office of the Company is situated a notice stating:
- 11.4.1 the date, time and place to which the meeting has been adjourned;
  - 11.4.2 the matter before the meeting when it was adjourned;
  - 11.4.3 the basis for the adjournment.
- 11.5 The Chairperson of the Board shall preside as Chairperson at every general meeting of the Company. If at any meeting the Chairperson is not present within 15 (Fifteen) minutes after the time appointed for holding the meeting, or is unwilling to act as Chairperson, the Vice-Chairperson shall act, and if such person is also unwilling or absent, the members present shall choose one of their number to be the Chairperson.
- 11.6 The Chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

## **12. VOTES OF MEMBERS**

- 12.1 At all general meetings of the Company every member present in person or represented by a proxy shall be entitled to 1 (One) vote, which may be exercised either on a show of hands or on a poll.
- 12.2 In the case of an equality of votes, the Chairperson of the meeting shall have a second or casting vote.

- 12.3 At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll (before or on the declaration of the result of the show of hands) is demanded by the Chairperson or the members so qualified as referred to hereunder, and unless a poll is so demanded, a declaration by the Chairperson that a resolution has, on a show of hands, been carried unanimously or by a particular majority or declined and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 12.4 The demand for a poll shall be made by not less than 2 (Two) members present at the meeting and having the right to vote at such meeting and the demand for a poll may be withdrawn.
- 12.5 If a poll is duly demanded, it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 12.6 A poll demanded on the election of a Chairperson or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

### **13. SIGNED RESOLUTIONS – MEMBERS**

Unless a meeting is required to be held in compliance with the Act, a resolution signed by or on behalf of all members of the Company shall be as valid and effectual as if passed at a duly convened general meeting of the Company.

**14. PROXIES**

14.1 The instrument appointing a proxy shall be in writing under the hand of the appointer, or of his agent duly authorised in writing. A proxy need not be a member of the Company. The holder of a general or special power of attorney incorporating the necessary powers contemplated hereunder, shall be entitled to attend and vote at any meetings on behalf of the member granting such power.

14.2 The Company shall be obliged to give effect to the appointment of a proxy, provided that the instrument appointing such proxy, including the power of attorney or other authority, if any, under which it is signed or a duly certified copy thereof, shall have been deposited at the Office not less than 48 (Forty-Eight) hours before the time appointed for such meeting or any adjournment thereof.

14.3 The instrument appointing a proxy shall be in the following form, or in such form as may be acceptable to the Board:

“I \_\_\_\_\_ of \_\_\_\_\_ being a member of THE JEWELLERY COUNCIL OF SOUTH AFRICA (A Non-Profit Company) , hereby appoint \_\_\_\_\_ of \_\_\_\_\_ or failing him/her \_\_\_\_\_ of \_\_\_\_\_ or failing him/her \_\_\_\_\_ of \_\_\_\_\_ as my proxy to attend, vote, and speak for me and on my behalf at the \_\_\_\_\_ meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and any adjournment thereof as follows:

Resolution	In favour	Against	Abstain from voting
Resolution .....			
Resolution .....			
Resolution .....			

(Indicate instructions to proxy by way of a cross in the space provided above). Unless otherwise instructed, my proxy may vote as she/he thinks fit.)

Signed this ..... day of ..... 2016

\_\_\_\_\_  
Signature

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his or her stead. Such proxy need not also be a member of the Company).

**15. APPOINTMENT OF DIRECTORS**

15.1 There shall at no time be less than 3 (Three) directors of the Company.

15.2 At least three directors of the Company who are to be named and who are not related or connected to each other, (as defined in section 1 of the Income Tax Act 58 of 1962, as amended from time to time), shall accept full fiduciary responsibility in respect of the activities of the Company and no single person shall directly or indirectly control the decision making powers pertaining to the activities of the Company.

- 15.3 The first directors of the Company complying with the provisions of clause 15 .2 above shall be **Christy Alexander Janse van Rensburg, Lorna Delpont and Lourens Johannes Maré.**
- 15.4 The directors shall be nominated, substituted and removed, as the case may be, by resolution of the Company in general meeting and no person shall be capable of being appointed as a director unless the provisions of section 71 of the Act have been duly complied with.
- 15.5 Where the number of directors falls below the requisite minimum number, the continuing director/s may act only to increase the number of directors to the required minimum or to summon a general meeting for that purpose.

The Board of Directors of the Company shall consist of representatives nominated by each of the Constituent Bodies, divisions and representatives nominated by unaffiliated members and co-opted members from related sectors servicing the industry as well as individuals believed to have specialized knowledge that can contribute to the aim and objectives of the company, labour representation and government representation and shall take office every 3 (three) years and at that first meeting after the Annual General Meeting. Each representative or his constituent body or a division shall appoint an alternate, who may attend meetings. Any individual or other legal persona who does not belong to a constituent body or a division, may nominate one person to represent a constituent body or division called “unaffiliated members” on the Board. The person nominated, with the highest number of nominations, being not less than 5 (Five), shall be the representative of the “unaffiliated members” on the Board.

The office of any member of the Board shall be vacated in any one of the following events:

- 15.5.1 termination for whatever reason of his membership of the constituent body or division he represents;
- 15.5.2 if his membership of the constituent body or division which he represents, is suspended by such body;
- 15.5.3 if his membership of the Council of the constituent body or division which he represents, is terminated for whatever reason;
- 15.5.4 if he absents himself at three consecutive meetings of the Board;
- 15.5.5 if he tenders his resignation which shall be by way of giving one week's written notice to such effect to the Board;
- 15.5.6 when the constituent body or division which he represents is no longer in good financial standing with the Company.

## **16. ELECTION OF CHAIRMAN**

- 16.1 The Chairman shall be elected from the members of the Board at the first Board meeting following on an Annual General Meeting of the Company. **Only a member who has served for at least one year on the Committee of the Association shall be eligible for election as Chairman.**
- 16.2 Nominations for the office of Chairman shall be proposed and seconded after an Annual General Meeting. Should there be more than one candidate duly proposed and seconded, the Chairman shall be elected by secret ballot.



Only persons who are serving Executive Directors for a calendar year or more on the Board of the Company may be eligible to be nominated as the Chairman of the Company.

- 16.3 The Chairman shall hold office for a term of 3 (three) years until the next succeeding Annual General Meeting and may be eligible for re-election for only another term of 3 (three) years.

## **17. ELECTION OF VICE-CHAIRMAN**

- 17.1 The Vice-Chairman shall be elected from the members of the Board at the first Board meeting following on an Annual General Meeting of the Company.

- 17.2 Nominations for the office of Vice-Chairman shall be proposed and seconded after an Annual General Meeting. Should there be more than one candidate duly proposed and seconded, the Vice-Chairman shall be elected by secret ballot. Only persons who are serving Executive Directors on the Board of the Company for a year or more may be eligible to be nominated as the Vice- Chairman of the Company.

- 17.3 The Vice-Chairman shall hold office for a term 3(Three) years until the next succeeding Annual General Meeting and may be eligible for re-election and may be eligible for re-election for only another term of 3(Three) years.

## **18. POWERS AND DUTIES OF THE BOARD OF THE DIRECTORS**

- 18.1 Subject to the provisions of this Memorandum, the business of the Company shall be managed by the directors, who may pay on behalf of the Company, all expenses incurred in promoting and incorporating the Company, and may exercise all such

powers of the Company as are not by the Act or by this Memorandum required to be exercised by the Company in general meeting.

Without in any way derogating from the generality of the foregoing, the directors shall be entitled to exercise on behalf of the Company any of the powers itemised under clause 18 of the Memorandum of Incorporation of the Company.

The directors shall have power:

to make and enforce rules and by-laws relating to matters which are not inconsistent with this Memorandum or any law;

to appoint on such terms and conditions as it may deem fit and to determine and vary the duties of, remove or suspend the Chief Executive Officer and Company Secretary of the Company or other officials;

to appoint, from time to time, such sub-committees as it may deem fit and to appoint the attorneys of the Company;

to admit or refuse to admit, an organization to membership of the Company; to fix the conditions under which former members of the Company may be readmitted to membership and to suspend, fine or expel any member for any cause appearing sufficient to a majority of the Board of Directors;

to institute or defend legal proceedings by or against the Company, or on behalf of or against individual members;

to acquire, either by purchase, lease or otherwise, any movable or immovable property on behalf of the Company and to sell, let, mortgage or otherwise deal with or dispose of any movable or immovable property of the Company, provided that no immovable property shall be mortgaged, let or leased for a period longer than five (5) years, unless approved at the Annual General Meeting of the Company;

to appoint an Executive Committee which shall consist of the Chairman, Vice-Chairman, Chief Executive Officer, and a minimum of two other members of the Board from different constituent bodies or divisions to handle the day-to-day affairs of the Company;

to open and operate banking accounts in the name of the Company;

to impose levies on constituent bodies and members, in addition to membership fees, at its discretion subject to Clause 4 above;

to do such things, as in the opinion of the Board of Directors appear to be in the interest of constituent bodies and members;

to co-opt members to the Board in its sole discretion, provided that every appointment made in terms of this Clause 18 shall be subject to confirmation at the next Annual General Meeting of the Company. Co-opted members shall be known as Non-Executive Directors whilst nominated members shall be known as Executive Directors. Non-Executive Directors shall not have the right to vote at Board meetings, and not be able to be elected as either the Chairman or Vice-Chairman of the Company.

18.2 The aims and objects of the Board of Directors shall in general be the following:

18.2.1 To provide a forum for discussion about all matters of common interest and to endeavor, by mutual consultation amongst the members of the Company to co-ordinate the policy and activities of all entities associated with the Industry.

18.2.2 To promote, encourage, advance and protect the interests of the members of the Company; to assist and encourage co-operative action and to deal with each and all such matters as may affect the common interest of the members of the Company and/or the sound national and international economic development of such interests in the Republic of South Africa and abroad.

18.2.3 To collect, compile and disseminate information regarding members' products and, through research, analysis, promotion, publicity, advertising and education, to advance and improve the standards of manufacture and/or marketing, and contact and communication between members of the Company and consumers, in the Industry.

18.2.4 To advise or assist associations retailers, manufacturers, wholesalers, importers, and groups on the furtherance of the objects of the Company and to assist in the settlement of disputes which may arise between suppliers and consumers in the Industry, by means of mediation or arbitration.

18.2.5 To take active interest in any legislation and other measures, which might affect members of the Company, and to decide what action should be

taken through consultation with members and then work towards influencing matters to the general good of the members of the Company.

- 18.2.6 To build confidence between its members by increasing awareness of the Company's objects and to protect the general public from unfair practices by building and maintaining standards for the good of the public.
- 18.2.7 To join or become a member of any body or other organisation, or to co-operate with any such body or organisation, which has, objects wholly or in part similar to those of the Company.
- 18.2.8 To do or perform all such other acts, deeds, things or functions as may be incidental or conducive to the attainment of these objects.
- 18.2.9 To arrange and promote Trade Shows and participation in such, locally and internationally and also to assist in the promotion of exports.

## **19. DUTIES OF OFFICE BEARERS**

The office bearers of the Board shall consist of the Chairman, the Vice-Chairman, and the Chief Executive Officer whose duties will be as follows:

### **19.1 The Chairman**

The Chairman shall preside at all meetings of members or directors at which he is present, sign the minutes of meetings after confirmation, generally exercise supervision over the affairs of the Company and perform such duties as by usage,

custom and necessity pertain to the office of Chairman. He shall ex-officio be a member of all sub-committees.

## **19.2 Vice-Chairman**

The Vice-Chairman shall exercise the powers and perform the duties of the Chairman in the absence of the latter and shall also assist the Chairman in the exercise of his general duties.

19.3 The Chief Executive Officer may be appointed by the Company and shall hold office for an indefinite period, subject to termination by three months/ written notice thereof by the Company or the Chief Executive Officer, as the case may be. The Chief Executive Officer may be discharged forthwith by the Company for serious neglect of duty or serious misconduct. In the event of the office becoming vacant, the Company may appoint another Chief Executive Officer.

19.3.1 The Chief Executive Officer shall implement the decisions of the board and put into action the strategy and business plan of the Company.

19.3.2 Chief Executive Officer shall keep or cause to be kept proper books of account in such form as may be prescribed by the Company; he shall exercise general supervision in regard to the finances of the Company and its expenditure, do all things usually done by the Financial Manager of a Company having similar objects and shall at each meeting of the Board present a statement of account of the finances of the Company and in particular of its income and expenditure during the immediately preceding period. The Chief Executive Officer shall have the right to appoint a Financial Manager with the approval of the Executive Committee.

The Chief Executive Officer will oversee all correspondence of the Company, attend all meetings and record or cause to be recorded minutes of the proceedings; submit reports in regard to the financial position of the Company not less than once every three (3) months; prepare in conjunction with the Financial Manager or accountant, the balance sheet and statement of income and expenditure referred to in this Memorandum; and perform such other duties as the Board may reasonably require.

Represent the council on all committees and other bodies. Should the Chief Executive Officer deem fit he may ask that a member nominated by the Executive committee act as an alternate to the Chief Executive Officer on the external body.

The Chief Executive Officer shall not exercise a vote at any meeting except the Executive Committee but may speak on all matters at all meetings.

- 19.3.3 The Chief Executive Officer shall perform any other functions and duties as shall be determined by the Executive Committee, from time to time.
- 19.3.4 The Company Secretary will receive requisitions for and issue notices of meetings; conduct all correspondence of the Company, keeping originals of letters received and copies of those dispatched and at each meeting of the Company read or make available the correspondence since the previous meeting; attend all meetings and record minutes of the proceedings; keep the register of members and record therein every members address and date of enrolment and the subscriptions and levies payable by each member;

issue official receipts for all monies received and bank all monies within 7 (Seven) days of receipt.

#### **19.4 Acting Chairman**

In the event of both the Chairman and the Vice-Chairman being unable, either temporarily or permanently, to perform their duties, the Executive Committee shall appoint a member to act as Chairman until the Chairman or Vice-Chairman is able to resume his duties or until the next election of office bearers as the case may be.

### **20. MEETINGS OF THE BOARD**

20.1 Regular meetings of the Board shall be held at a venue and time as shall be fixed by the Chairman in consultation with the Board.

20.1.1 Meetings shall be convened at the instance of the Executive Committee or the Chairman or upon a requisition in writing signed by not less than three (3) members of the Board.

20.1.2 The Chairman if he considers it necessary or urgent shall be entitled to convene a meeting.

20.2 The Chief Executive Officer shall notify the members of the Board of the Agenda for any meeting. Notice of meeting setting forth the Agenda and any other relevant matters shall be dispatched before the date of such meeting.

20.3 At all meetings of directors', the quorum necessary for the transaction of business shall be 5 (FIVE) directors;

20.4 Each director present or represented at a meeting shall be entitled to exercise 1 (ONE) vote; provided that in the event



that the Company is granted authority to collect contributions from the public under the provisions of the Non-Profit Organisations Act, and for as long as such authority is granted to the Company, a director who receives remuneration for his or her services in terms of the provisions of Clause 21 below shall be entitled to attend and speak at all meetings of the Board of Directors but shall not be entitled to vote. Where a person is alternate to more than one director, or where an alternate is also a director in his or her personal capacity, he or she shall have a separate vote on behalf of each director whom he or she is representing in addition to his or her own vote as director, if applicable.

- 20.5 Questions arising at any meeting shall be decided by a majority of votes, save where otherwise stated in this Memorandum. In the case of an equality of votes, the Chairperson shall have a second or casting vote.

## **21. DIRECTORS' REMUNERATION AND REIMBURSEMENT**

- a. The directors shall:
- i. be entitled to receive such reasonable remuneration for their services as directors and/or employees of the Company as may be determined by the Company in Duly Constituted Executive Committee meeting, with due regard to their duties and responsibilities pending approval of the annual budget at the following Board Meeting;
  - ii. be entitled to reimbursement of all authorised and approved travelling, subsistence and other expenses incurred by them in the execution of their duties in or about the business of the Company.

## **22. REMOVAL OF DIRECTORS**

Without derogating from the provisions of section 71 of the Act, and of Clause 23 below, the directors nominated or appointed as aforesaid may from time to time be removed and substituted by resolution of the Company in general meeting, conducted in accordance with the requirements of section 71 of the Act.

## **23. DISQUALIFICATION AND RESIGNATION OF DIRECTORS**

The office of director shall be vacated if a director:

- a. becomes prohibited from being a director by virtue of any provisions of the Act or this Memorandum;
- b. contravenes the provisions of Clause 24 .1 below;
- c. retires or is removed from office in accordance with the provisions of this Memorandum.

## **24. DIRECTORS' INTERESTS**

- a. No director, Committee member or office bearer shall have either a vote in any meeting convened for purposes of an agreement of commercial value or have an interest in, or benefit from, any contract which the directors may conclude, on behalf of the Company, with any person, company, organisation or association of persons unless such interest has been disclosed in terms of the Act.
- b. Any contract concluded by any director of the Company in contravention of the provisions of Clause 24 .1 above shall be null and void and shall not bind the Company.

**25. SIGNED RESOLUTIONS – DIRECTORS**

Subject to the Act, a resolution in writing signed by all the directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted. The resolution may consist of several documents, each signed by one or more directors in terms of this clause.

**26. MINUTES AND MINUTE BOOK**

The directors shall, in accordance with section 24(3)(d) of the Act, cause minutes to be kept in books provided for the purpose:

- a. of all appointments of directors and Officers;
- b. of the names of the directors present at each meeting of the directors, and of any Committee appointed by the directors;
- c. of all resolutions and proceedings at all meetings of the Company and the directors, and of Committees appointed by the directors; and every director or Committee member present at such meeting shall sign his or her name in a book to be kept for that purpose; and shall cause such minutes to be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting.

**27. INSPECTION OF MINUTES**

The minutes kept of every meeting of the Company under section 24(3)(d) of the Act may be inspected and copied as provided in section 24 of the Act.

**28. DELEGATION – COMMITTEES**

- a. The directors may delegate any of their powers to committees which the Board may resolve to establish. Subject, if applicable, to the provisions of clause 28.2 below, all such committees shall, in the exercise of the powers delegated to them, remain accountable to the Board and conform to any regulation that may be imposed on them by the Board.
- b. In the event that the Company is granted authority to collect contributions from the public under the provisions of the Non-Profit Organisations Act, and for as long as such authority is granted to the Company, all decisions and resolutions taken by any committee established in terms of this clause 28 shall, prior to their implementation, be approved by the Board at the next meeting of the Board of Directors.
- c. A committee may elect a Chairperson of its meetings; if no such Chairperson is elected, or if at any meeting the Chairperson is not present within 30 (Thirty) minutes after the time appointed for holding the same, the members present may choose one of their number to be Chairperson of the meeting.
- d. A committee may meet and adjourn as deemed proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairperson shall not have a second or casting vote the matter will have to be voted on by the Executive Committee.

**29. DEFECTS IN THE APPOINTMENT OF DIRECTORS**

All acts done by any meeting of the directors or of a committee appointed by the directors, or by any person acting as a director, shall,

notwithstanding that it be afterwards discovered that there was some defect in the appointment of such director or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

### **30. ALTERNATE DIRECTORS**

- a. Without derogating from the powers of the Executive Committee stated herein, a director shall be entitled to nominate any other person to act as alternate director in his or her place during his or her absence or inability to act as such. If such appointment is made, the alternate director shall in all respects be subject to the terms, qualifications and conditions existing with regard to the other directors of the Company.
- b. The appointment of an alternate director shall be revoked, and the alternate director shall cease to hold office, whenever the director who nominated him or her ceases to be a director; or should such director or the alternate himself or herself give notice to the Company that such alternate has ceased to represent the director concerned; or should the Board of directors so decide.

### **31. REPRESENTATION OF THE COMPANY ON OTHER ORGANISATIONS**

- a. Representatives of the Company elected by any Board meeting to represent the Company on other bodies with which the Company is co-operating, shall serve in that capacity and not as individuals, and shall carry out the instructions of the Company in all matters appertaining to their appointment, and they shall cease to represent the Company at its discretion.

- b. When any occasion arises which prevents any elected person from serving as a representative on other organisations, such person shall be deemed to have resigned from such representation and a new representative shall be elected by the Company.
- c. A constituent body or member may resign as member by giving one month's notice in writing to the Company, provided that no such resignation shall take effect unless all monies due to the Company have been paid.
- d. Any constituent body or member may be suspended or expelled by the Executive Committee after consultation with the Arbitration Committee for any infringement of its rules or by-laws or for any activities prejudicial to the aims and objects of the Company, or if fees or levies have not been paid within ninety (90) days after they are due and payable and an account for such fees or levies have been rendered.
- e. Any constituent body or member in arrears for six months with the payment of any fees or levies may be suspended or expelled at the discretion of the Executive Committee.

## **32. COMPLAINTS AGAINST SERVANTS AND OFFICIALS**

Any constituent body or member alleging a complaint against a servant or official of the Company, shall make such complaint in writing to the Board who shall transmit same to the Chairman. The Chairman shall in his own discretion deal with it or may submit it for decision to the Board.

### **33. ARBITRATION**

- a. Any member who alleges a dispute with another member shall refer same to Arbitration by lodging in writing, with the Company Secretary, details of such dispute and the relief sought against the other member. The Company Secretary shall notify the Chief Executive Officer of the Company of the dispute received and he in turn, may refer the dispute to the Chairman of the Arbitration Committee of the Company who shall handle the dispute in accordance with the Arbitration Rules of the Company.
- b. Any member of the Company shall be deemed by virtue of it being such to have submitted itself to the reference to and decision by the Arbitration Committee of any dispute as if it had signed a Deed of Submission to the arbitration and decision by the Arbitration Committee of the Company. It shall be deemed to have consented to the arbitration being held in Johannesburg.
- c. In the event of any member of the Company instituting legal proceedings against another member of the Company concerning a dispute that falls within the ambit of this Memorandum, such litigation may only take place once the Arbitration proceedings as set out in terms of this Memorandum have been followed to the extent that the members herewith agree that the Arbitration as set out herein shall take preference to any litigation that may take place subsequent to a dispute between the members and that any litigation between the members before the Arbitration has been finalised be held in abeyance.
- d. By virtue of the terms and conditions prescribed to non-members and with their consent thereto, all non-members shall have to consent to Arbitration in the event of a dispute between a member and a non-member.

- e. Insofar as the ambit of this clause is concerned, the term “member” may also include any form of entity which an individual member, may have an interest in and this includes any membership interests, shareholding, or the position of director the member may hold to the extent that the said entity may be made a party to any dispute insofar as any act or omission which the individual member may have committed on behalf of the said entity.
- f. The nature of any dispute which shall be submitted to arbitration shall be:
  - i. Any dispute between members arising from or forming part of any transaction or negotiation or act or omission in the course of any activity in respect of any matter referred to in this Memorandum above.
- g. As stated in clause 33.4 above, the Arbitration Committee shall be entitled by virtue of the consent of the non-member to apply the provisions of this Memorandum to a dispute alleged and relief sought by a non-member of the Company against a member and in such event the provisions of this Memorandum shall apply to such non-member exactly as if he or she was a member.
- h. The above provisions shall be deemed to be a stipulation for the benefit of such non-member and in the event of these provisions being applied, such non-member shall acknowledge in writing that he or she agrees to be bound by the terms of this Memorandum.
- i. The Arbitration Committee may levy such charges against such member or non-member as it deems fit and may require any or all of such charges to be deposited in advance.



- j. The Arbitrator(s) shall have the right to use an assessor or any other professional assistance in the course of their duties and may make a suitable award on the costs thereof.
- k. Save as herein provided, Arbitration Proceedings shall be subject to the Arbitration Act, No 42 of 1965 and any amendments thereof.
- l. The decision of the Arbitrator(s) shall in any dispute be final and binding upon the parties thereto.

**34. PROCEDURES TO BE FOLLOWED BEFORE CAUTIONARY NOTICES CAN BE ISSUED**

Before any cautionary notice can be issued, the Company will take certain steps whereby it can indemnify itself against possible legal issues. These steps should be the following:

- a. Upon receipt of the complaints against any party, the Company should, as a matter of principle, always request written documentation whereby allegations against any party can be substantiated. Any unsubstantiated allegation received against a party can only be qualified as hearsay evidence and it would therefore be inadmissible in a court of law.
- b. After receipt of written documentation, the Company needs to apply its discretion insofar as the gravity, seriousness and truthfulness of the complaint are concerned. The Company will then take whatever measures possible to inform the affected party of the complaint against it. In order to expedite the giving of notice as well as the whole procedure that needs to be followed the Company will afford the affected party an acceptable period of time, by example, three days within which to reply, failing which a cautionary notice may be issued.

This cautionary notice will be issued to all of the members of the Executive Committee for consideration and discussion.

**35. PROCEDURES TO BE FOLLOWED WHERE COMPLAINANTS DOCUMENTATION ARE INVOLVED IN CAUTIONARY NOTICES**

Upon receipt of the complainant's documentation in which prima facie evidence exists for the affected party to be placed on a cautionary notice, the Company would have divested itself of its duty to protect its members against negligent actions or unlawful practices by any party. The party affected by the cautionary notice shall have the duty to rebut the evidence of the Company. Affected parties shall therefore be compelled to provide the Company with sufficient evidence rebutting the prima facie evidence that the complainants' documentation provides. If the affected party is unable to provide the Company with the necessary rebuttal the Company would have acted properly and lawfully.

In order to circumvent litigation, the Company will afford the affected party a period of time within which it has to respond. Failure to respond or alternatively, failure to respond timeously shall give the Company the authority to place the affected party on the cautionary notice. The Company will consider the surrounding circumstances of each complaint on an individual basis. The Company will be guided inter alia by the time frame within which a complaint had been lodged after any incident had occurred between relevant parties, the seriousness of the complaint, the value attached to the complaint as well as the history of both parties involved with the complaint.

### **36. PROCEDURES TO BE FOLLOWED IN CASES WHERE NO DOCUMENTATION IS RECEIVED FROM THE COMPLAINANT**

In the absence of documentary evidence, the Company needs to be provided with prima facie proof that an unlawful practice had been committed.

As stated above, the Company, upon receiving prima facie proof of the complaint, the company would have been deemed to have divested itself of its duty to serve the interests of the jewellery industry as a whole. In those cases, where a criminal case is opened, the company would require a police case number, alternatively a civil case, a copy of the issued summons will suffice. As stated above, the affected member would have to be given a reasonable period of time to reply to the complaint received against it. In the event of the affected member responding within the specified period of time, the Company shall have to weigh up the gravity of the charges, the time frame within which the complaint was received as well as the type of reply the affected party provides.

If the affected member is unable to provide the Company with reasonable grounds not to be placed on the cautionary notice in the discretion of the Company, the Company has the discretion to decide whether reasonable grounds exist for a cautionary notice to be delivered or not. The decision of the Company shall be final.

### **37. ARBITRATION COMMITTEE**

#### **37.1 Election**

37.1.1 The Arbitration Committee shall consist as far as possible of six members of constituent bodies in good

standing who shall be elected to hold office as such by members at the Annual General Meeting and who have been nominated in writing prior to the Annual General Meeting by a member proposing and a member seconding, both of whom shall be entitled to vote.

- 37.1.2 Such candidates for election shall be listed on a ballot paper which ballot paper shall be issued to each member present at the Annual General meeting entitled to vote and who shall indicate by cross for whom he votes.
- 37.1.3 A member shall not cast a number of votes greater than six and shall not be entitled to allocate more than one vote to any candidate and in the event that he does so, his ballot paper shall be deemed to be spoilt and the votes cast disallowed.
- 37.1.4 The six candidates securing the highest number of votes shall be deemed and declared to be elected.
- 37.1.5 The scrutineers appointed by the Meeting shall count the ballot papers and their decision shall be final.
- 37.1.6 Where there is a tie between two or more candidates in the voting and there are not sufficient vacancies in respect of such candidates, a further ballot shall be taken in order to select the number of persons required from those who tied.
- 37.1.7 The six members so elected shall hold office for a period of 3 (three) years until the ensuing Annual General Meeting, subject to any of them completing any arbitration proceedings in progress.

- 37.1.8 If for any reason whatsoever there shall be less than six candidates standing for office then all such persons so standing shall forthwith be declared elected.
- 37.1.9 In respect of the shortfall such Annual General Meeting shall be entitled notwithstanding anything to the contrary herein contained to appoint eligible members to hold office or to authorize immediate nominations for a further ballot or to authorize the Executive Committee to fill such shortfall by co-option.
- 37.1.10 The Executive Committee shall appoint a Chairman of the Arbitration Committee from the members elected. The Chairman of the Company may not be elected to the Arbitration Committee. Voting shall be by show of hands unless any member requires that it be by secret ballot.
- 37.1.11 The Executive Committee may appoint additional committee members in different centers in the country and the terms of their appointment shall be determined by the Executive Committee.

## **37.2 Function**

- 37.2.1 The function of the Arbitration Committee shall be to investigate the conduct of any member (whether upon receipt of a written complaint or whether of its own accord) should it have reason to believe that such member has been involved in misconduct, misdemeanor, dishonesty, unfair trade practice, lack of ethics, defamation of another member, failing to report any misconduct as detailed herein to the Company or breaches of the Company's

Memorandum of Incorporation, Rules or Directives issued by any Committee or any Sub-Committee.

- 37.2.2 All members shall be bound by the Disciplinary clauses of the Company.
- 37.2.3 The Company shall have the right to review such clauses from time to time.
- 37.2.4 Written notice of the date, time and place of such investigation shall be given to the accused member and the complainant and witness if any.
- 37.2.5 At the hearing of the investigation the accused member shall be asked to plead guilty or not guilty to the complaint. If he pleads guilty no evidence need be led, unless required by the Committee. He shall then be found guilty and after allowing an address in mitigation, the Committee shall impose its punishment.
- 37.2.6 If the accused member pleads not guilty, the complainant and witnesses shall give evidence and be cross-examined by the accused member and examined by the Committee.
- 37.2.7 After the conclusion of evidence against him the accused member shall be entitled if he so wishes to apply for the complaint against him to be dismissed. If this is disallowed, he may choose to give evidence and may call witnesses subject to cross examination by the complainant and examination by the Committee.

- 37.2.8 At the conclusion of evidence the complainant and the accused member may address argument to the Committee which shall thereafter give its finding. Should its verdict be one of guilty the accused member may make an address in mitigation where after the Committee shall impose its punishment.
- 37.2.9 The accused member and plaintive shall be entitled to request the refusal of any member of the Committee on grounds stated and the Committee (including the member concerned) shall make a decision thereon which shall be final and binding. The Committee (if necessary the Chairman) shall have the power to co-opt any other member to ensure that a quorum is present.
- 37.2.10 The Committee shall have the right to summon any member or other interested party to appear at the hearing of the investigation.
- 37.2.11 The Committee shall have the right to make summary decisions on any conduct as detailed in this clause 37.2 above, which shall occur or emanate in any proceedings before it.
- 37.2.12 The Committee shall have the right to mete out such punishment as it may in its sole and entire discretion deem fit whether by way of fine which shall accrue to the Company, compensatory fine, which shall accrue to an aggrieved party, specific performance such as a

letter of apology or return of property, suspension of membership (which shall be confirmed by the Committee), or recommendation to the Executive Committee for expulsion, which powers as stated in no way exclude the Committee from imposing any other punishment it may deem fit.

#### **38. SECRETARY**

The directors may from time to time, by resolution, appoint a person to be Secretary of the Company.

#### **39. INVESTMENT FUND/S**

The directors may establish any reserve fund or funds for the purpose of meeting contingencies or for the furtherance of any of the objects of the Company, and such fund or funds may be invested as provided in clause 18.1 of the Memorandum of Incorporation.

#### **40. BORROWING POWERS**

The directors' borrowing powers shall be unlimited, and they shall be entitled to borrow money and to mortgage or bind the undertaking and property of the Company or any part thereof provided that the decision was validated by the Executive Committee for amounts below R200,000 (Two hundred thousand Rand) or by the Board for amounts higher than R200,000 (Two hundred thousand Rand).



**41. ACCOUNTS AND AUDIT**

- 41.1 In the event that the Company is granted authority to collect contributions from the general public under the provisions of the Non-Profit Organisations Act, and for as long as such authority is granted to the Company, the directors shall cause such accounting records to be kept as are prescribed by, and in compliance with, the provisions of the Non-Profit Organisations Act.
- 41.2 Auditors shall be appointed (and if necessary removed and replaced) and their duties regulated in accordance with the Act; provided that the auditor shall not be a director of the Company.
- 41.3 Without derogating from the provisions of clause 40.1 above, the directors shall cause such accounting records to be kept as are prescribed by section 24 of the Act, in order to fairly present the state of affairs and business of the Company and to explain the transaction and financial position of its trade or business.
- 41.4 The accounting records shall be kept at the office of the Company and shall always be open to the inspection of the directors.
- 41.5 The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to the inspection of members not being directors.

## **42. ANNUAL FINANCIAL STATEMENTS**

- 42.1 In the event that the Company is granted authority to collect contributions from the general public under the provisions of the Non-Profit Organisations Act, and for as long as such authority is granted to the Company, the directors shall cause financial statements and annual reports to be prepared and submitted to the Director of Non-Profit Organisations in accordance with the provisions of the Non-Profit Organisations Act.
- 42.2 The directors shall cause the financial statements and annual reports referred to in clause 41.1 above to be submitted to the Director of Non-Profit Organisations in respect of each financial year of the Company and shall cause such financial statements and annual reports to lie for inspection, free of charge, by any member of the public at the office of the Company for a period of 3 (Three) months from the date on which the financial statements and annual reports were submitted to the Director of Non-Profit Organisations.
- 42.3 Without derogating from the provisions of clauses 41.1 and 41.3 above, the directors shall from time to time, in accordance with section 24 of the Act, cause to be prepared and laid before the Company in general meeting such annual financial statements as are referred to in such sections.
- 42.4 A copy of the annual financial statements which are to be laid before the Company in general meeting shall not less than 21 (Twenty One) days before the date of the meeting be made available on the web-site of the company or be sent to every member of the Company and to the Registrar; provided that this clause 42.4 does not require a copy of those documents to be sent to any person of whose address the Company is not aware.

### **43. NOTICES**

43.1 A notice may be given by the Company to any member either personally or by sending it through the post in a prepaid letter addressed to such member at his or her registered address or, if he or she has no registered address in the Republic, at the address, if any, or the e-mail address supplied by him or her to the Company for the giving of notices to him or her.

43.2 Any notice if given by post shall be deemed to have been served 7 (Seven) days after the letter containing the same is posted and, in proving the giving of the notice sent by post, it shall be sufficient to produce a registered slip indicating that the notice was properly addressed and dispatched. In the case of email, the same shall be deemed to have been received within 48 (forty eight) hours of it being sent.

43.3 Notice of every general meeting shall be given in any manner required by law or authorised by this Memorandum:

43.3.1 to every member of the Company;

43.3.2 to the auditor for the time being of the Company.

43.4 The accidental omission to give any notice of a general meeting to a member or the non-receipt of any such notice by a member, shall not invalidate any resolution passed at such meeting.

### **44. INDEMNITIES**

44.1 Subject to any contrary provision of the Act, every director and other Officer of the Company shall be indemnified out of the funds of the Company against all authorised and approved

costs, expenses and liabilities properly incurred by him or her in the course of the Company's business.

- 44.2 No director, officer or employee of the Company shall be liable for the acts, receipts, neglects or defaults of any other director, officer or employee or for joining in any receipt or other act for conformity, or for loss or expense happening to the Company through the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom any moneys, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his or her office, or in relation thereto, unless the same happen through his or her own wrongful act, negligence, default, breach of duty or breach of trust.

#### **45. PERMITTED ALTERATIONS**

Subject to the provisions of clause 18.1 of this Memorandum of Incorporation and of the Act, the Company may alter the provisions of its Memorandum of Incorporation by special resolution.

## Signatories to Memorandum of Incorporation

Particulars of subscriber	Date and signature of subscriber	Particulars of witness	Date and signature of witness
1. Full names Occupation Residential address Business address Postal address		1. Full names Occupation Residential address Business address Postal address	
2. Full names Occupation Residential address Business address Postal address		2. Full names Occupation Residential address Business address Postal address	
3. Full names Occupation Residential address Business address Postal address		3. Full names Occupation Residential address Business address Postal address	
4. Full names Occupation Residential address Business address Postal address		4. Full names Occupation Residential address Business address Postal address	
5. Full names Occupation Residential address Business address Postal address		5. Full names Occupation Residential address Business address Postal address	
6. Full names Occupation Residential address Business address Postal address		6. Full names Occupation Residential address Business address Postal address	
7. Full names Occupation Residential address Business address Postal address		7. Full names Occupation Residential address Business address Postal address	