

In the name of Allah, Most Merciful, Most Beneficent

## **CONSTITUTION / MEMORANDUM OF ASSOCIATION**

“Welfare Registration Number”

### **1. INTERPRETATION**

In the interpretation of this Memorandum and unless contrary to or excluded by the subject or the context:

- 1.1 words signifying the singular number shall include the plural and vice versa;
- 1.2 words signifying the masculine shall include the feminine;
- 1.3 the headings and marginal notes the Memorandum are for reference purposes only and shall not be taken into account in construing these presents:
- 1.4 each term, power, or authority herein shall be given the widest possible interpretation;
- 1.5 the following words and expressions shall have the following meanings:

| <b>Words and Expressions</b>    | <b>Meanings</b>   |
|---------------------------------|---|
| "Alternate Director"            | A person duly appointed as an Alternate Director of the Jamaat.   |
| "Jamaat"                        | Muslim Jamaat.  |
| "The Jamaat"                    | Serves as a reference to the Jamaat includes any association of persons or body corporate as the case may be. |
| "The Directors"                 | The Board of Directors of the Jamaat.   |
| "The Executive Committee"       | The Directors and members of the Jamaat as appointed from time to time.                                       |
| "General Meeting"               | The Annual General Meeting or an Extraordinary General Meeting of the Jamaat as the case may be.              |
| "Annual General Meeting"        | The Annual General Meeting of the Jamaat duly called and constituted or any adjournment thereof.              |
| "Extraordinary General Meeting" | An Extraordinary General Meeting of the Jamaat duly called and constituted or any adjournment thereof.        |
| "Muslim"                        | a person of the Ahlus Sunnah wal Jamaat as defined by the Jamiatul Ulama South Africa or its successors.      |
| "The Office"                    | The registered office for the time being of the Jamaat.   |

|                                 |  |
|---------------------------------|--|
| "Person"                        | Includes a body corporate a company or association of persons as the case may be.  |
| "Secretary"                     | The Secretary of the Jamaat for the time being or any authorised person acting in his place and includes any person authorised by the directors to carry out any of the duties of the secretary. |
| "Sign"                          | Includes the reproduction of a signature, printing with an India-rubber stamp or other kind of stamp or any other mechanical means.  |
| "Memorandum"                    | Memorandum of Association  |
| "The Jamaat in General Meeting" | The Jamaat acting by an ordinary resolution passed at a General Meeting.   |
| "Musallee"                      | any person who frequents the Masaajid controlled by the Jamaat for salaah  |
| "Writing"                       | Includes printing, typewriting, lithography, electrical or any other mechanical process or partly one and partly the other process.  |

## **2. NAME**

2.1 The name of the Jamaat shall be:

2.2 The name of the Jamaat may be changed with the approval of three-fourths of the members of the Jamaat.

## **3. MAIN OBJECT**

To assist and promote religious, social, cultural, spiritual and educational advancement of the relevant Muslim community and to propagate and uphold Islam. The Jamaat is a non-profit making institution.

## **4. ANCILLARY OBJECTS**

The Jamaat has the following additional objectives:

4.1 To establish and operate Mosques, Jamaat-Khanas, cemeteries and educational institutions for the benefit of the relevant Muslim community.

4.2 To establish a Zakaat Fund for the distribution of zakaat to under-privileged Muslims.

4.3 To receive, collect and accept grants, aids, donations, lillah, fees, rentals, legacies, endowments and bequests (in whatever form) and to use the receipts (in whatever from) for carrying out the objectives of the Jamaat.

4.4 To engage, appoint or dismiss employees, teachers, servants, or agents of the Jamaat, and to determine and define duties of employees.

4.5 To appoint sub-committees and ad-hoc committees and to define their functions, powers and procedures. These sub-committees shall, from time to time, submit reports of their activities and action to the Jamaat.

4.6 To acquire, equip, sell, lease etc. an,, of the property of the Jamaat.

4.7 To acquire any rights and privileges which the Jamaat may regard as necessary or convenient for its purpose and generally to perform all such acts as are incidental to the aforesaid objectives and to do such other work as may appear to the best interests of the Jamaat.

## **5. PERPETUAL SUCCESSION**

The Jamaat will continue in operation until it is dissolved. Dissolution may only take place with the approval of the members at the time. The Jamaat will assume the status of a "Juristic Person."

## **6. SEPARATE OWNERSHIP**

All assets of the Jamaat are for the communal benefit of the Jamaat and are vested in the directors (as trustees) as appointed from time to time. Under no circumstances do members have any claim on these assets.

## **7. CONDITIONS**

The special conditions that apply to the Jamaat are as follows:

- 7.1 The income and property of the Jamaat whenever derived shall be applied solely towards the promotion of its main and/or ancillary objects and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise however, to the members of the Jamaat or its controlling or controlled company; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Jamaat or to any member in return for any services actually rendered to the Jamaat.
- 7.2 Upon its winding-up, de-registration, or dissolution, the assets of the Jamaat remaining after the satisfaction of all its liabilities shall be given or transferred to some other Muslim association(s) or institution(s), having objects similar to its main object, to be determined by the members of the Jamaat at or before the time of its dissolution or, failing such determination, by the Jamiatul Ulama South Africa (or its successors).

## **8. FINANCIAL YEAR**

The financial year of the Jamaat shall end on \_\_\_\_\_ of each year.

## **9. GUARANTEE**

- 9.1 The liability of members is limited to the amount referred to in 9.2 hereunder.
- 9.2 Each member undertakes to contribute to the assets of the Jamaat in the event of its being wound up either while he is a member or within one year thereafter, for the purpose of payment of the debts and liabilities of the Jamaat contracted before he ceases to be a member, and of the costs, charges and expenses of the winding up, and for

adjustment of the rights of the contributors amongst themselves, an amount not exceeding one Rand.

## 10. MEMBERSHIP

10.1 The members of the Jamaat shall be:

10.1.1 the signatories to this Memorandum;

10.1.2 all Musallees who are or have been resident in town and its district for a minimum of six months, who apply for membership. The Jamaat may refuse membership to any Muslim person, provided that such refusal is ratified by a two-thirds majority of the board of directors.

For the purposes of this subsection, a Muslim person is defined as a Muslim over the age of 18, who subscribes to the beliefs, ideals, teachings, jurisprudence, and views espoused by the Ahlus Sunnah Wal Jamaah as interpreted by the four Mazaahib of jurisprudence; provided that the person is not undertaking any full time educational instruction.

Any person not failing within the above shall cease to be a full member and become an associate member.

10.1.3 A Musallee who is resident for less than six months may apply for "Associate Membership." Associate membership does not confer any benefits other than the use of the Jamaat facilities. An associate member is not entitled to:

10.1.3.1 attend, vote, or speak at any meeting of members;

10.1.3.2 be a proxy for any member of the Jamaat;

10.1.3.3 institute any action against the Jamaat or the board of directors as envisaged in various clauses of this Memorandum;

10.1.3.4 request any information on the affairs of the Jamaat that a member is entitled to request as envisaged by this Memorandum.

An associate member is only entitled to the use of the Jamaat's praying, ablution, cemetery, and education facilities. An associate member does not have the rights, benefits, obligations and liabilities of a normal member.

The Jamaat may refuse an application for associate membership without explaining its reasons for the rejection. The decision of the

Jamaat is final.

- 10.1.4 every application for membership shall be submitted in writing on a form, as the directors shall from time to time prescribe.
- 10.2 Every member of the Jamaat shall have the right at any time to resign from membership upon one month's notice and shall do so by notification in writing to the Secretary of the Jamaat.
- 10.3 Every member of the Jamaat shall register his address, and any change of such address, with the Jamaat and notices may be served on any member personally or by sending them a pre-paid post addressed to such member at his registered address, and any notice so posted shall be deemed to have been served upon the member forty-eight (48) hours after the time of posting. Should a member fail to register his address with the Jamaat he shall be deemed to have waived his right to receive notices.
- 10.4 A member who is a natural person shall cease to be a member upon his death or if he is requested to resign by two thirds of the members at the time.
- 10.5 Notwithstanding clause 9, every member is required to pay an annual subscription as determined by the Jamaat from time to time, The subscription can be paid either annually or in monthly or quarterly installments. If any member fails to pay his subscription for any year within one month of the same becoming due, the secretary or financial director shall notify him of the fact, and if any member fails to pay his subscription for any year within three months of the same becoming due, he shall after being notified by the secretary or financial director of his status, cease to be a member of the Jamaat. He shall be eligible for re-admission upon payment of all arrears due from him while a member.

## **11. REGISTER OF MEMBERS**

The Jamaat shall maintain at its registered office a register of members of the Jamaat. The register of members shall be open to inspection.

## **12. GENERAL MEETINGS**

The Jamaat shall in each year, hold an annual general meeting; provided that not more than fifteen months shall lapse between the date of one annual general meeting and that of the next and that an annual general meeting shall be held within nine months after the expiration of the financial year of the Jamaat.

13. Other general meetings of the Jamaat may be held at any time.

14. Annual general meetings and other general meetings shall be held at such time and place, as the directors shall appoint.

#### **15. NOTICE OF GENERAL MEETINGS**

An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than twenty one clear days' notice in writing and any other general meeting shall be called by not less than four clear days' notice in writing. Any notices placed on the notice boards of the ..... Mosques and jamaat-Khanas shall be deemed adequate notice to the members. The notice shall be exclusive to the day on which it is served or deemed to be served and of the day for which it is given, and shall be given in a manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Jamaat in general meeting, to such persons as are, under this Memorandum, entitled to receive such notices from the Jamaat, provided that a meeting shall, notwithstanding the fact 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, being a majority holding not less than 70% of the total rights of all the members.

16. The accidental omission to give notice of any meeting to any particular member or members shall not invalidate any resolution passed at any such meeting; notwithstanding the fact that a notice placed on the notice boards of the Mosques and Jamaat-Khanas shall be deemed to be adequate notice to the members and hence any member who has not received personal notice in writing is prohibited from stating that he has not received any notice.

#### **17. PROCEEDINGS AT GENERAL MEETINGS**

The annual general meeting shall deal with and dispose of all matters prescribed by the agenda, 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.

18. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, twenty five percent of full members present in person shall be a quorum.

19. If within half an hour after the time appointed for the 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 a day not earlier than seven days and not later than twenty one days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present in person shall be a quorum.

20. Where a meeting has been adjourned as aforesaid, the Jamaat shall, upon a date not

later than three days after the adjournment, place on the notice board of the Mosques and Jamaat-Khanas a notice stating:

20.1 the date, time and place to which the meeting has been adjourned;

20.2 the matter before the meeting at the time when it was adjourned; and

20.3 the grounds for adjournment.

21. The chairman, of the Board of Directors shall preside as chairman at every general meeting of the Jamaat.
22. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act as chairman, the members present shall elect the vice chairman to act as chairman for the meeting and failing that elect one of their number to be chairman.
23. The chairman 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 at which the adjournment took place. When a meeting is adjourned, the provisions of Clauses 18 to 22 shall *mutatis mutandis* apply to such adjournment.
24. In the case of an equality of votes, the chairman of the meeting shall be entitled to a second or casting vote.

## **VOTES OF MEMBERS**

25. On a show of hands, every member present in person shall have one vote, and on a poll, every member present in person or by proxy shall have one vote.
26. No member shall be entitled to vote at any general meeting unless all monies presently payable by him to the Jamaat have been paid.
27. Questions arising at any meeting of the Jamaat shall be decided on a show of hands by a majority of the members present in person or represented by proxy, unless before or upon the declaration of the show of hands a poll is demanded by the Chairman or by at least three members present in person or represented by proxy. Unless a poll be so demanded a declaration by the Chairman of the meeting that a resolution has been carried or has been carried unanimously or by a particular majority, or lost or not been carried by a particular majority shall be conclusive, and an entry to that effect in the Minute Book shall be conclusive evidence thereof, without proof of the number or proportion of the votes in favour of or against such resolution.
28. If a poll be demanded in manner aforesaid, it shall be taken at such time and place and in such manner, as the Chairman of the meeting shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
29. In the event of an equality of votes, whether on a show of hands or on a poll the Chairman of the meeting shall have a second or casting vote.
30. On a poll, votes may be given either personally or by proxy.

## **31. ENTRENCHED PROVISION**

Notwithstanding the provisions of this Memorandum, the Jamaat shall not engage in, agree to, perform or undertake any of the acts, procedures or matters hereinafter specified, except with the prior approval of the Jamiatul Ulama South Africa or its successors:

- 31.1 The burdening or sale of any land on which Islamic religious activity (Mosque, Jamaat Khana or Madressa) is being conducted;
- 31.2 The sale of any land on which education (Islamic and secular) is being conducted, unless the sale is to the body (Islamic institution) conducting the education;
- 31.3 The mortgaging of any land owned by the Jamaat;
- 31.4 The receipt of any interest on bank deposits or loans;

- 31.5 The payment of any interest;
- 31.6 Any amendments to this constitution that seeks to admit non-Muslims;
- 31.7 The dissolution of the Jamaat.
- 32. A director who has been a party to any of the above acts, procedures or matters without obtaining the required approval in writing is guilty of an offense and the Jamaat in general meeting will decide whether:
  - 32.1 to ratify the actions of the directors after receiving the required approval from the Jamiatul Ulama South Africa;
  - 32.3 to remove the director or directors from office;
  - 32.3 to elect not to ratify the action(s) of the director(s) and hold the director personally liable for his/their action(s).

## **PROXIES**

- 33. The instruments appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing to. A proxy must be a member of the Jamaat. The holder of a general or special power of attorney, provided he is himself a member, given by a member shall be entitled to attend meetings and to vote, if duly authorised under the power to attend and take part in the meetings.
- 34. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarial certified copy of such power or authority shall be deposited at the registered office of the Jamaat not more than forty eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be valid after the expiration of six months from the date when it was signed, unless specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.
- 35. The appointment of a proxy shall be in writing on a form prescribed by the Directors or as near thereto as circumstances permit:  
(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy must be a member of the Jamaat).
- 36. A member cannot hold more than five proxies. Where a member does hold more than five proxies only his vote and that of five proxies will be accepted.

### **37. DIRECTORS**

- 37.1 Unless and until otherwise determined by the Jamaat in general meeting, the number of directors shall not be less than five and not more than nineteen.
- 37.2 The directors of the Jamaat shall be appointed by the members at a general meeting.
- 37.3 Should the Jamaat fail to appoint directors at an annual general meeting, the persons previously holding office as directors shall continue in office until the Jamaat appoints directors.
- 37.4 The directors agree that they shall not be entitled to any remuneration arising from services rendered in terms of this Memorandum.
- 37.5 Notwithstanding clause 37.4, the directors shall be paid all their traveling and other expenses properly and necessarily expended by them in and about the business of the Jamaat, and if any director shall be required to perform extra services or shall be otherwise especially occupied about the Jamaat's business, he shall be entitled to receive expenses to be fixed by the directors.

### **38. FILLING OF CASUAL VACANCIES ON, AND ADDITIONS TO BOARD OF DIRECTORS**

The directors may by unanimous decision at any time appoint any other person as a director, either to fill a casual vacancy or as an addition to the board, but so long as the total number of directors shall not at any time exceed the maximum number fixed; and provided that every appointment made in terms of this clause and other provisions of this memorandum, and shall be subject to the confirmation of the Jamaat in general meeting at the next annual general meeting thereof.

### **39. QUALIFICATIONS OF DIRECTORS**

- 39.1 A director must be a Muslim as defined by the Jamiatul Ulama South Africa and a member of the Jamaat.
- 39.2 The following persons are not eligible to serve as directors of the Jamaat:
- 39.2.1 Any person who whilst a director ceases to be a member of the Jamaat,
- 39.2.2 Any person who whilst a director is convicted of fraud, theft, murder or is mentally incompetent to deal with his own affairs.

#### **40. POWER AND DUTIES OF DIRECTORS**

Notwithstanding the provisions of clause 31:

- 40.1 The business of the Jamaat shall be managed by the directors who may exercise all such powers of the Jamaat as are noted by this Memorandum, required to be exercised by the Jamaat in general meeting, subject to this Memorandum and to such regulations, not inconsistent with the aforesaid Memorandum or provisions, as may be prescribed by the Jamaat in general meeting, but no regulation prescribed by the Jamaat in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation has not been made.
- 40.2 The directors on behalf of the Jamaat shall do all that is necessary to advance the objectives of the Jamaat, provided at all times that any action contemplated hereunder shall be in the best interests of the Sunni Muslim community. The directors are entitled to:
- 40.2.1 Construct, maintain, and expand Mosques, Jamaat-Khanas, Madressas, and cemeteries.
- 40.2.2 Purchase or acquire in any way land, shares, debentures and every other kind or description of movable and immovable property;
- 40.2.3 Manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to, account or in any way otherwise deal with its undertaking or all or any part of its property and assets - subject to the entrenched provision above. Any sale of land shall be referred to a general meeting for approval.
- 40.2.4 Apply for, purchase or by any other means, acquire, protect, prolong and renew any patents, patent rights, licenses, trademarks, concessions or other rights and to deal with and alienate them as provided in paragraph 40.2.3.
- 40.2.5 Borrow money. If the amount is in excess of R50 000, the approval of the members of the Jamaat (simple majority) is required. Any borrowings shall be in accordance with Islamic law.
- 40.2.6 Secure the payment of moneys borrowed in any manner including the mortgaging and pledging of property and, without detracting from the generality thereof, in particular by the issue of any kind of debenture or debenture stock, with or without security - subject to the entrenched provision above.
- 40.2.7 Develop and manage any educational establishment with an Islamic ethos.

40.2.8 With the approval of members, lend any money to any person or Jamaat.

40.2.9 Invest money in compliance with Islamic law.

40.2.10 Open and operate banking accounts and to overdraw such accounts.

40.2.11 Form and have an interest in any company or companies for the purpose of acquiring the undertaking or all or any of the assets or liabilities of the company or for any other purpose which may seem, directly or indirectly, calculated to benefit the Jamaat, and to transfer to any such company or companies the undertaking or, all or any of the assets or liabilities of the Jamaat. Form any trusts or section 21 companies for the ownership of assets, and conducting of religious and educational activities.

40.2.12 Take part in the management, supervision, and control of the operations of any other similar body and to enter into partnerships and/or joint ventures.

40.2.13 Remunerate any person or persons for services rendered in its formation or in the development and/or administration of its business of the Jamaat.

40.2.14 Make donations.

40.2.15 Undertake and execute any trust.

40.2.16 Act as principals, agents, contractors, or trustees,

40.2.17 Pay gratuities and pensions and establish pension schemes.

40-2.18 Appoint, dismiss, and conduct grievance procedures on employees. The majority of directors must be in favour of the dismissal of any Ulama.

## **BORROWING POWERS**

41. The directors may, subject to the entrenched provision, exercise all the powers of the Jamaat to borrow money and to mortgage or bind its undertaking and property or any part thereof.

42. Any mortgaging or binding shall only apply to properties constructed or acquired for investment purposes, with due regard to Islamic law.

## **PUBLIC OFFICER**

43. The directors may from time to time appoint one or more of their body to the office of public officer or manager on such terms and conditions as they may think fit and revoke such appointment subject to the terms of any agreement entered into in any particular case.
44. The directors may from time to time entrust to or confer upon a public officer or manager, for the time being, such powers and authorities vested in them as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the directors and may from time to time revoke or vary all or any of such powers and authorities.

## **45. MINUTES OF MEETINGS**

The directors shall cause minutes to be kept:

- 45.1 of all appointments of officers;
- 45.2 of names of directors present at every meeting of the Jamaat and of the directors; and
- 45.3 of all proceedings at all meetings of the Jamaat and of the directors, such minutes shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.

## **46. DISQUALIFICATION OF DIRECTORS**

The office of director shall be vacated if the director:

- 46.1 ceases to be a director or becomes prohibited from being a director by virtue of any provision of the Companies Act (no. 61 of 1973); or
- 46.2 resigns his office by notice in writing to the Jamaat; or
- 46.3 is absent without permission of the directors from meetings of directors held during that period for more than 3 (three) months or 3(three) meetings, whichever is greater; or
- 46.4 is directly or indirectly interested in any contract or proposed contract with the Jamaat and fails to declare his interest and the nature thereof in the manner required by this

Memorandum; or

46.5 is removed from office by an ordinary resolution of the Jamaat.

47. Any person disqualified from being or acting as a director of the Jamaat and who purports to act as a director or directly or indirectly takes part in or is concerned in the management of the Jamaat may at the discretion of the directors be subject to legal action.

#### **48. REMOVAL OF DIRECTORS**

Notwithstanding the provisions of any contract for the time being existing, the Jamaat may by resolution at its sole discretion remove any director from office and may (subject to the provisions of Clause 39) by resolution appoint another person in his stead.

48.1. Special notice shall be lodged with the Jamaat of any proposed resolution to remove a director under Clause 48 or to appoint any person in the stead of a director so removed at the meeting at which he is removed, and on receipt of notice of such a proposed resolution, the Jamaat shall forthwith deliver a copy thereof to the director concerned who shall be entitled to be heard on the proposed resolution at the meeting.

48.2 Should a director who is being removed submit representations in writing on his removal - the representations shall be distributed to members or alternatively placed on the notice board of the Mosques and Jamaat-Khanas.

#### **PROCEEDINGS OF DIRECTORS**

49. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they may deem fit. The quorum of directors necessary for the transaction of business may be fixed from time to time by the directors.

50. A director may at any time and the secretary upon the requisition of a director shall convene a meeting of the directors. A director who is not in the Republic of South Africa shall not, during such time as he is absent therefrom, be entitled to notice of any meeting.

51. Questions arising at any meeting of directors shall be decided by a majority of votes and in case of an equality of votes, the chairman shall have a second or casting vote.

52. The directors may elect a chairman and a deputy chairman and determine the period for which each is to hold office. The chairman, or in his absence the deputy chairman, shall be entitled to preside over all meetings of directors. If no chairman or deputy chairman is elected, or if at any meeting neither is, within fifteen minutes of the time

appointed for holding the same present or willing to act as chairman thereof, the directors present shall choose one of their number to be chairman of such meeting.

53. 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 convened and held.
54. The continuing directors may act notwithstanding any vacancy on their body, but if and so long as their number is reduced below the number fixed by or pursuant to this Memorandum as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number or of convening a general meeting of the jamaat, but for no other purpose.
55. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any rules that may be imposed on it by the directors.
56. All acts done by any meeting of the directors or a committee of 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 any such directors or persons acting as aforesaid or that they or any of them were disqualified, be as valid as if every person had been duly appointed and were qualified to be a director.

## **57. DECLARATION OF INTERESTS**

- 57.1 A director of the jamaat who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract referred to in sub-section 57.2, which has been or is to be entered into by the jamaat or who so becomes interested in any such contract after it has been entered into, shall declare his interest and full particulars thereof as provided in Clause 58. 1.
- 57.2 The provisions of sub-section 57.1 shall apply to any contract or proposed contract which is of significance in relation to a jamaat's business and which is entered into or to be entered into:
  - 57.2.1 in pursuance of a resolution taken or to be taken at a meeting of directors of the jamaat; or
  - 57.2.2 by a director, officer or member of the jamaat who either alone or together with others has been authorised by the directors of the jamaat to enter into such contract or any contracts of a similar nature.

58.

58.1 For the purposes of sub-section 57.1 a general notice in writing given to the directors of the jamaat by a director thereof to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may after the date of the notice and before the date of its expiry be made with that company or firm, shall be deemed to be sufficient declaration of interest in relation to any interest in relation to any contract or proposed contract so made or to be made, if.

58.1.1 the nature and extent of the interest of the said director in such company or firm is indicated in the said notice; and

58.1.2 at the time the question of confirming or entering into the contract in question is first considered or at the time such director becomes interested in a contract after it has been entered into, the extent of his interest in such company or firm is not greater than is stated in the notice.

59. A general notice under sub-section 58.3 may from time to time be amended and shall not be effective beyond the end of the financial year of the Jamaat but may from time to time be renewed.

60. No declaration of interest by a director shall be of any effect unless it is made at or before the meeting of directors at which the question of confirming or entering into the contract is first taken into consideration and, if in writing, is read out at the meeting. If for any reason it is not possible for a director to make any such declaration at or before a particular meeting of directors, he may make it at the first meeting of directors held thereafter at which it is possible for him to do so and shall in that event state the reason why it is not possible to make it at such particular meeting.

61. Any director, officer or member who fails to comply with this Clause (57) will be removed from office and legal action may be instituted at the discretion of the directors of the Jamaat.

61.1 Every declaration of interest shall be recorded in the minutes of the meeting of directors at which the declaration is made and any declaration of interests by an officer or member shall be recorded in the minutes of the first meeting of directors held after the date of that declaration.

## **62. REGISTER OF DIRECTORS AND OFFICERS**

The Jamaat shall keep in one of the official languages of the Republic, a register of directors and officers of the Jamaat and cause to be entered therein his full forenames and surname, his identity number or, if he has no such number, his date of birth, his nationality if not South

African, his occupation, his residential, business and postal addresses and the date of his appointment.

### **63. GRIEVANCE PROCEDURES**

Any member of the Jamaat who has a dispute or complain that any particular act or omission of the Jamaat is unfairly prejudicial, unjust or inequitable, or that the affairs of the Jamaat are being conducted in a manner unfairly prejudicial, unjust or inequitable to him or to some part of the members of the Jamaat, or that the actions of the Jamaat are not in accordance with the Sunni Islamic school of thought, shall follow the grievance procedure as outlined below in order to solve the complaint and or dispute:

63.1 The first step is for the member(s) to approach the ombudsman who will investigate the matter and mediate on behalf of the aggrieved member(s).

64. If the mediation as outlined in clause 63.1 fails the aggrieved members shall refer the matter to the Jamiatul Ulama South Africa for arbitration.

### **APPOINTMENT OF AN OMBUDSMAN**

65. The Jamaat, in a general meeting, shall appoint any member of the Jamaat as ombudsman.

66. As outlined in the grievance procedure in clause 63, should any person be aggrieved by any decision made by the Jamaat, its board of directors, its committees or other organs - the person shall (if he wishes to pursue the grievance) request the ombudsman, in writing, to investigate the matter and mediate on behalf of the aggrieved person.

67. The ombudsman may for the purposes of any investigation conducted by him:

67.1 summon any director, officer, employee, member or agent of the jamaat to appear before him at a time and place mutually agreed to, to be questioned or to produce any book or document;

67.2 retain for examination any book or document produced to him for examination for a period not exceeding two months unless he can show good cause for retaining it longer.

68. The ombudsman will produce a report at the end of his investigation and may address any meeting of any organ of the jamaat. The ombudsman may call a general meeting of members should this be required. The decision of the general meeting of members is final. The aggrieved person may then seek arbitration. The entire process should not take

longer than thirty days.

69. Any director, official, employee, or member of the jamaat that does not co-operate with the ombudsman can be penalised at the discretion of a general meeting of members. The person concerned may make representations to the general meeting of members.

#### **ARBITRATION**

70. The Jamiatul Ulama South Africa or its successors shall be the Arbitrator.
71. In the event of a resolution not being achieved within thirty days of the ombudsman being notified of the grievance in writing, such a grievance shall be referred to Arbitration in terms of the Arbitration Act (No.42 of 1965) as amended, and the decision of the Arbitrator shall be final and binding upon the parties.
72. The arbitration will be held as soon as possible after it is requested with a view to it being completed within thirty days after it has been requested.
73. The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages, account of profits, a penalty or otherwise as he in his sole discretion may deem fit and appropriate, and to deal as he deems fit with the question of costs, including if applicable, costs on the attorney and client scale, or own client scale, and his own fees.
74. Any award made by the arbitrator will be final and binding on the parties to the agreement.
75. Nothing contained in this clause will preclude either party from obtaining intermediate relief on an urgent or other basis from the Jamiatul Ulama South Africa, pending the decision of the assigned arbitrator.

#### **GRIEVANCE AGAINST A MEMBER**

76. The jamaat may institute any action against a member, including criminal and civil proceedings. The jamaat, may in a general meeting of members remove a person as a member for contravention of any clause in this Memorandum or for bringing the jamaat into disrepute by his actions.

#### **77. INITIATION OF PROCEEDINGS ON BEHALF OF THE JAMAAT BY MEMBERS**

Where the jamaat has suffered damages or loss or has been deprived of any benefit as a result of any wrong, breach of trust or breach of faith committed by any director or officer of the jamaat

or by any past director or officer while he was a director and officer of the jamaat and the jamaat has not instituted proceedings for the recovery of such damages, loss or benefit, any members of the jamaat (representing not less than twenty percent of the membership at the time) may initiate proceedings on behalf of the jamaat against such director or officer or past director or officer in the manner prescribed by this Clause notwithstanding that the jamaat has in any way ratified or condoned any such wrong, breach of trust or breach of faith or any act or omission relating thereto.

78.

78.1 Any such members shall serve a written notice on the jamaat calling on the jamaat to institute such proceedings within one month from the date of service of the notice and stating that if the jamaat fails to do so, an application to the Jamiatul Ulama South Africa under sub-section 78.2 will be made.

78.2 If the jamaat fails to institute such proceedings within the said period of one month, the members may make application to the Jamiatul Ulama South Africa for an order appointing the equivalent of a curator ad /item for the jamaat for the purpose of instituting and conducting proceedings on behalf of the jamaat against such director or officer or past director or officer,

## **ACCOUNTS**

79. The jamaat shall keep such accounting records as are necessary to fairly present the state of affairs and business of the jamaat and to explain the transactions and financial position of the jamaat.

80. The accounting records shall be kept at the registered office of the jamaat or at such other place as the directors think fit and shall at all times be open to inspection by the directors.

81. Any member after providing thirty days written notice may inspect the records.

82. The directors of the jamaat shall in respect of every financial year of the jamaat prepare annual financial statements and shall lay them before the annual general meeting of the jamaat. The annual financial statements must comply with the requirements of generally accepted accounting practice as codified by the Institute of Chartered Accountants of South Africa.

83. The annual financial statements of the jamaat must fairly present the state of affairs of the jamaat and its activities as at the end of the financial year concerned and the surplus or deficit of the jamaat for that financial year.

84. If the directors fail to comply with the requirements of Clauses 80 to 83, any member,

at the cost of the jamaat, may request a firm of accountants to prepare the necessary financial statements. The member may also call a general meeting of members to approve a special resolution for the removal of all the directors.

## AUDITORS

85. The jamaat shall at every annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting of the jamaat.
86. A retiring auditor is deemed to be re-appointed at an annual general meeting without any resolution being passed, unless:
  - 86.1 he is not qualified for re-appointment;
  - 86.2 a resolution has been passed for his removal;
  - 86.3 he has given the jamaat notice in writing of his unwillingness to be re-appointed.
87. If an annual general meeting fails to appoint an auditor, the directors may do so within thirty days as from the date of the meeting. Should the directors fail to appoint an auditor, the Jamiatul Ulama South Africa at the request of the directors shall appoint an auditor.
88. The following persons cannot be appointed as auditor of the jamaat:
  - 88.1 a director, officer or employee of the jamaat;
  - 88.2 a director, officer, or employee of any company providing secretarial or accounting services to the jamaat;
  - 88.3 a person who by himself habitually or regularly performs the duties of secretary or bookkeeper to the jamaat;
  - 88.4 a person who at any time during the financial year was a director or officer of the jamaat;
  - 88.5 a person who is not appropriately qualified. The auditor must be a person who is a member of a recognised professional accountancy body - he however, does not need to be in public practice.
89. An auditor may only be removed from office by the passing of a special resolution at a general meeting of members.

90. The auditor must issue an opinion on whether the financial statements as prepared by the directors fairly present the state of affairs of the jamaat at the end of the financial year and the surplus or deficit of the jamaat for that financial year. The auditor shall comply with all generally accepted auditing practice requirements.

## **NOTICES**

91. A notice may be given by the jamaat to any member either by advertisement, personally, by sending it by post in a prepaid letter addressed to such member at his registered address or (if he has no registered address in the Republic) at the address (if any) within the Republic supplied by him to the jamaat for the giving of notices to him, or by placing a notice on the notice board of the Mosques or Jamaat-Khanas. A notice placed on the notice boards of the Mosques and Jamaat-Khanas, provided they are placed within the time frames outlined under the clause on notice for meetings; shall be deemed to be adequately communicated to members.

92. Notice of every general meeting shall be given in any manner authorised:

92.1 to every member of the Jamaat except, in the case of notices to be given personally or sent by post. Those members who (having no registered address within the Republic) have not supplied to the Jamaat an address within the Republic for the giving of notices to them; and

92.2 to the auditor for the time being of the Jamaat;

no other person shall be entitled to receive notice of general meeting. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

## **INDEMNITIES**

93. Every director, and officer of the Jamaat, and any person employed by the Jamaat as auditor, shall be indemnified out of the funds of the Jamaat against all liability incurred by him as such director, officer or auditor, in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in respect of any proceedings which are abandoned.

94. No director, officer or employee of the Jamaat shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee, or for joining in any receipt or other act for conformity, or for loss or expense happening to the Jamaat

through the insufficiency or deficiency of any security in or upon which any of the moneys of the Jamaat shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious 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 part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office, or in relation thereto, unless the same happen through his own negligence, default, breach of duty or breach of trust.

## **95. DISTRIBUTIONS OF INCOME TO MEMBERS**

No distributions of surpluses will be made to members.

## **96. AMENDMENTS TO THE MEMORANDUM**

Additions, alterations or amendments to the Memorandum may not be made otherwise than by a three-fourth majority of those entitled to vote at a Special or General Meeting, provided notice of such additions, alterations or amendments be given to the Secretary thirty (30) days prior to the holding of such meeting. The Secretary shall advertise the amendment seven (7) days before the holding of such meeting, in which circular the nature of the proposed additions, alterations or amendments shall be recorded.

## **97. DISSOLUTION**

97.1 Notwithstanding clause 3 1, the Jamaat may be dissolved if at least three-fourths of the members present and voting at a Special Meeting of those entitled to vote, convened for the purpose of considering such matter are in favour of dissolution, notwithstanding any other clause of this Memorandum to the contrary. Prior permission must be obtained from the Jamiatul Ulama South Africa to hold such a meeting. The Jamiatul Ulama South Africa are free to attend the meeting and make whatever representations they deem fit. Not less than twenty-one (21) clear days' notice shall be given of such meeting and the notice convening the meeting shall clearly state the question of dissolution of the Association and disposal of its assets will be considered. If there is no quorum present at such meeting, the meeting shall be abandoned.

97.2 If, upon the winding up or dissolution of the Jamaat, there remains assets after the satisfaction of all its debts and liabilities, the same shall not be paid or distributed amongst its members, but shall be given or transferred to some other association or institution, or associations or institutions having its main objects similar to that of the Jamaat or before the time of dissolution, or, failing such determination, by the Jamiatul Ulama South Africa.

## **INTERIM MEASURES**

98. This Memorandum will become binding upon the Jamaat once an extra-ordinary meeting of the Jamaat has ratified the Memorandum as its constitution.
99. All existing members are deemed to become members of the Jamaat under the rules and regulations of this Memorandum.
100. The existing officials and executives of the Jamaat shall resign upon adoption of this Memorandum. Elections for directors will then take place in accordance with the procedure outlined in this Memorandum.
102. All existing and outstanding actions and matters will immediately fall within the ambit of this Memorandum.
103. All current grievances (that is, grievances declared prior to the adoption of this Memorandum) whether declared by the Jamaat or by members shall be resolved within the grievance procedures outlined in this Memorandum.