

Explanatory Memorandum

Following responses by Members of the World Plumbing Council (WPC), the Executive Board at its London meeting, February 2000 took a decision to investigate incorporating WPC as a non-profit industry organisation in Geneva Switzerland. It was considered that Geneva, Switzerland provided an ideal location for the incorporation of the World Plumbing Council as Switzerland, is seen as a neutral country with many international non-profit organisations headquartered there, including the World Health Organisation.

As members may appreciate the World Plumbing Council is an unincorporated Association without any statutory or legal structure. While WPC has been formed by a group of identifiable industry associations and organisations for a particular purpose as defined by its Articles and by-laws the by laws have little legal status as they do not contain any reference to the laws of any country or jurisdiction to which they may apply.

Incorporation of WPC becomes necessary if we are to create a legal structure, which enables WPC to further develop its relationship with its members, potential sponsors and organisations such as the World Health Organisation. An appropriate legal status becomes essential in establishing WPC's credibility and managing any liability that may arise as a result of any of its activities.

The Executive Board has sought independent legal advice from two legal firms based in Switzerland on how to proceed with incorporation. The firms are Werder & Schaub, Attorneys at law, Zurich, and La Live and Partners, Attorneys at Law, Geneva. Preliminary advice from both firms was that the World Plumbing Council as a non-profit organisation under Article 60ss of the Swiss Civil Code (CC) could incorporate. Article 60ss (CC) establishes the legal provisions for non-profit "societies or associations which have no commercial purpose".

Both firms also confirmed that the presentation of the by-laws would need to be restructured and that there were certain mandatory provisions, which would need to be included. Minimal material changes have been required by Swiss Law to the WPC Articles and these have been addressed in the draft articles.

The Executive Board commissioned LaLive and Partners to prepare a preliminary draft of the by-laws for their initial consideration prior to circulating to the members for their consideration and adoption. The preliminary draft was considered and reviewed by the Executive Board at an extra-ordinary Board Meeting convened during August in Hong Kong to consider among other things WPC's Future Directions including incorporation in Geneva and further amendments to WPC's Articles and By-laws to allow for incorporation. A subsequent draft of WPC's Articles and By-laws prepared by LaLive are included here for your review and if considered appropriate, adoption.

The purpose of this Memorandum for Members is to provide some explanation of the Executive Board's decision and the proposed amendments to WPC's Articles

as required by Swiss Law. The Executive Board were advised by LaLive and Partners, that if the World Plumbing Council is to be based in Geneva, the Articles and By-laws need to be in French as the original language, a requirement by Swiss Law, and can then be translated back into English. The draft we have circulated has been translated into English.

LaLive advised that there would be minimal material changes required to the WPC Articles in complying with Swiss Law. Members will note that perhaps the most significant changes, apart from the format and order of by-laws, are those relating to the voting rights of the Executive Board and the size of the Board. Previously when voting at a WPC meeting, some votes have been limited to one vote per country, with the Executive Board under the existing Article VII being able to exercise a vote. This Article has been amended to clarify this anomaly, which had caused some concern previously when a country vote has been taken on bids for the World Plumbing Conference, and addresses any perceived conflicts of interest in these matters. This amendment has also been necessary under Article 68 of the Swiss Civil Code which states; "No Member is allowed to vote on motions that relate to any transaction or legal proceedings between the society of the one part and himself, his spouse or any of his ascendants etc of the other part".

Article XIII - of the LaLive Draft sets out the voting requirements that are now proposed sub- clause 2 of this Article deals specifically with the potential conflict of interest issues.

The existing Article IV (a) establishes an Executive Board of 5. Under the new draft articles at Article V 2 it is proposed to allow for up to 7 Executive Board Members described as directors. The composition of the Executive Board is then covered under Article VIII 3 consisting of the Chairman, two Vice-Chairmen, a Treasurer, Secretary and the provision for 2 additional directors.

The rationale for the expansion of the Board is to cater for those countries and organisations that wish to participate on a more regular basis, in the affairs of the World Plumbing Council. At the South African Triennial Meeting it was agreed to develop a Long-Range Planning Committee. The extension of the Board facilitates this, while at the same time it broadens the representative base of the Executive Board.

Similarly Article IV (b) of the existing Articles limits the term an Executive Board Member may serve to two three year terms, this has been amended, allowing for each member of the Executive Board to be elected for a three year term and is then eligible for re-election. Article IX of the new draft Articles deals with the "Election of the Executive Board", with sub-clause 1 defining the term, which is now proposed to be unlimited.

A further amendment has also been proposed with respect to the composition of the Executive. The existing Articles, Article IV (c) (iii) limits representation on the Executive Board to one per country. The new draft allows for Article IX 3 (c) two

representatives from the same country but from different member organisations. The intent of this change is to not restrict the representation to fewer countries, but to allow any one country that may have committed individuals from different member organisations to participate on the Executive Board and help in the further development of WPC. It is felt that the current article dealing with this issue is restrictive. The Executive Board's view is that if this amendment is acceptable, the policy should be that at anyone time there should only be one country with two representatives on the Executive Board.

Article 64 of the Swiss Civil Code establishes the power of members in General Meeting and these are now detailed in Article VII of the new draft Articles, Competence of the General Meeting.

Members will note the inclusion of new Articles, in particular Article XV - Dissolution. This is a pretty standard legal requirement for any incorporated organisation; Article XVII is a requirement of Swiss Law, and Article XVIII - Interpretation, is self-explanatory.

It is the intent of this Memorandum to provide a broad appreciation of the changes that have been made to the WPC Articles and to present these Articles in a format that meets the requirements of Swiss Law. These proposed changes would allow for the incorporation of WPC in Geneva.

Incorporation will allow WPC to:

- * Formalise its status as a global organisation
- * Enhance its relationship with WHO and other organisations
- * Provide a protective mechanism for the interests of its members and office bearers
- * Provide the basis for the protection of our logo and name.

Other changes proposed have been raised by Members and the need to redraft the WPC Articles for incorporation provides an opportunity to address those suggested changes, including having the Executive Board take full responsibility for the annual audit rather than be the responsibility of the two vice chairman which is required by the existing Article V (d). This matter was discussed and the Executive Board was put on notice at the Triennial Meeting in South Africa, that this amendment would be proposed. The Executive Board looks forward to your responses, comments and further suggestions for the growth and development of the WORLD PLUMBING COUNCIL.