

**CONSTITUTION OF THE SOUTH AFRICAN SUGAR ASSOCIATION****Name and registered office**

1. (1) **Name:** The name of the Association shall be the South African Sugar Association.
- (2) **Registered Office:** The registered office of the Association shall be situated in the greater Durban area.

**Membership and representation**

2. (1) **Membership:** The members of the Association shall be the South African Sugar Millers' Association NPC (representing millers and refiners and hereinafter referred to as "**the Millers' Section**"), South African Cane Growers' Association NPC (hereinafter referred to as "**SACGA**") and South African Farmers' Development Association, a registered non-profit organization in terms of the Nonprofit Organisations Act, 1997 (hereinafter referred to as "**SAFDA**"). SACGA and SAFDA represent all growers and are both hereinafter collectively referred to as "**the Growers' Section**". The Millers' Section and the Growers' Section shall be equally represented as members of the Association.
- (2) SACGA and SAFDA shall each comprise half of the Growers' Section and shall collectively comprise the Growers' Section.
- (3) **Representation:** Each Section shall be represented by 18 delegates, provided that SACGA and SAFDA shall each be entitled to appoint 9 delegates to the Growers' Section.

**Administration**

3. (1) The affairs of the Association shall be administered by a Council consisting of an independent Chairperson who meets the requirements set out in clause 3(2) and 3 Vice-Chairpersons, and 20 Councillors elected annually at a general meeting of the Association, of whom 10 shall be nominated by the delegates of the Millers' Section, 5 shall be nominated by SACGA's delegates of the Growers' Section and 5 shall be nominated by SAFDA's delegates of the Growers' Section. The delegates of the Millers' Section may nominate a total of four alternates to its elected Councillors, the delegates of SACGA may nominate a total of 2 alternates to its elected Councillors and the delegates of SAFDA may nominate a total of 2 alternates to its elected Councillors, such alternates being appointed annually at the general meeting. Any Councillor failing to attend three consecutive meetings without leave of absence from the Council shall vacate office. Casual vacancies shall be filled by the Section which appointed the retired Councillor or alternate and casual vacancies of Councillors or alternates elected to represent the Growers' Section shall be filled by whichever of SACGA or SAFDA nominated the retired Councillor or alternate.
- (2) The Association's independent Chairperson must be independent in character and judgment and free of relationships and circumstances which are likely to affect, or could appear to affect, this independence. The Chairperson shall exercise objective and unfettered judgment and shall have no interest, position, association or relationship which when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making.
- (3) The independent Chairperson shall receive fees as may be from time to time determined by the Association.
- (4) Any person or persons nominated by majority decision of the Association's Council made in accordance with clause 3(2) shall be considered for election as Chairperson by the delegates of the Association and the delegates of the Association shall elect from amongst those nominees a Chairperson for the Association.
- (5) The Chairperson and the 3 Vice-Chairpersons of the Association shall be elected annually at the general meeting of the Association provided that 1 Vice-Chairperson shall be elected from persons nominated by the Millers' Section, 1 Vice-Chairperson shall be elected from persons nominated by SACGA and 1 Vice-Chairperson shall be elected from persons nominated by SAFDA. The Chairperson and the 3 Vice-Chairpersons of the Association shall each be elected on such terms as the Association may deem fit. The Chairperson and 3 Vice-Chairpersons need not be delegates nor Councillors of the Association. Casual vacancies occurring in the offices of the Chairperson or any of the 3 Vice-Chairpersons shall be filled by Council, such appointees to hold office until the following general meeting.
- (6) The Council may elect an executive committee from its own members consisting of such number as the Council may decide, and shall also elect such other committees as it may consider necessary. The Council shall determine the duties of any committee appointed by it and shall have the right to alter such duties from time to time. Committees shall without undue delay report to the Council. All committees shall be subject to the directions, and under the control of, the Council. Unless otherwise

agreed, both the Growers' Section and Millers' Section shall be equally represented on every committee. Unless otherwise agreed, SACGA and SAFDA shall be equally represented within the Growers' Section members of every committee. The Chairperson and the 3 Vice-Chairpersons of the Association shall be *ex-officio* members of all committees if not actually appointed thereto.

- (7) Auditors shall be appointed by the Council.

## Objects

4. The Association is established in order to carry out all functions assigned to the Council or the Association by or in terms of the Sugar Act, 1978 (Act No. 9 of 1978) (hereinafter referred to as the "Act"), or the Sugar Industry Agreement, referred to in section 4 of the Act (hereinafter referred to as the "Agreement"), and in particular but without limiting the generality of the foregoing -
- (a) to promote, foster, regulate, co-ordinate and assist with the production, storage, transport, handling and sale of sugar industry products;
  - (b) to take such steps as may be considered desirable to increase the consumption of sugar industry products;
  - (c) to promote reciprocal and/or preferential arrangements in respect of duties and tariffs, with the object of fostering and stimulating the promotion of the sugar industry in South Africa;
  - (d) to represent the views of the sugar industry to Parliament, Government and other public bodies and officials in the Republic of South Africa, and elsewhere, in such manner as the Council may deem expedient: Provided that a member shall not approach, or make representations to, the Government of the Republic of South Africa or any Government Department, or Parliament, on any matter affecting, or of general interest to, the sugar industry, without first giving the Association 10 days' written notice of his intention to do so;
  - (e) to provide machinery for examining and settling major grievances between the Sections;
  - (f) to establish from time to time an experiment station or experiment stations and a training and other operating centre or centres, and for such purposes to raise such loans with or without security for such amounts, and at such rates of interest and subject to such terms as may from time to time be necessary;
  - (g) to promote and assist in the cause of education and other areas of social responsibility in the Republic of South Africa or elsewhere;
  - (h) to take steps for the improvement of the technical knowledge of persons engaged in the sugar industry;
  - (i) to collect and circulate statistics and other information on all matters of interest to the sugar industry; and
  - (j) to do all such things as are in the opinion of the Association necessary, proper or advisable for the advancement generally of the sugar industry, or which are incidental or conducive to the attainment of all or any of the above objects, including the formation of any company, body or fund or the holding of any shares in any company formed to implement such objects and perform such functions.

## Powers of Council

5. Without prejudice to the general power conferred upon the Council by clause 4 it shall have and exercise the following powers and functions -
- (a) carry out all functions assigned to the Council or the Association in terms of the Act and the Agreement published thereunder;
  - (b) do all such things as may be incidental to the proper carrying out of the foregoing powers and of the functions hereby entrusted to it;
  - (c) delegate all or any of its powers conferred upon it by clause 4 and this clause to any committee referred to in clause 3; any decision or act duly arrived at or performed pursuant to any such delegation being deemed to be the decision or act of the Council itself;
  - (d) appoint an executive director, directors, managers and staff as may be required, on such terms and conditions as it may determine from time to time;
  - (e) enter into any agreement with such person or body, whether within the Republic of South Africa or outside, on such terms and conditions as the Association may think fit;
  - (f) take out and hold patents, trademarks and designs;
  - (g) form or become associated with such company or body as the Association may think necessary or desirable and, in so doing, collaborate with such one or more persons or bodies as the Association may, if it thinks fit, select;
  - (h) acquire or hold shares in such companies or bodies as the Council may consider desirable;
  - (i) acquire, deal with and dispose of both movable and immovable property;
  - (j) determine the quantity of sugar required for the local market, the quantity of carry-over stocks, the quantity of sugar to be exported each year, and each mill's share of these quantities, subject only to the provisions of the Agreement and any regulation published under section 10 of the Act;
  - (k) purchase, sell or deal in any sugar industry products or form any companies or bodies to purchase, sell or deal in any sugar industry products and act as the agent of any company or body in the purchase or sale of any sugar industry products;

- (l) originate, carry on, direct and control such publicity as the Association may deem it appropriate to undertake on behalf of the sugar industry in connection with the promotion and sale of sugar industry products in the local market and the export market;
- (m) make donations to whatever cause or for whatever purpose the Council may decide and sponsor where deemed advisable and in the interests of the sugar industry, development, the arts, sport or whatever other activity the Council may elect to support;
- (n) further the objects of the Association, promote and assist in the cause of education in the Republic of South Africa, or elsewhere, create one or more trusts upon such terms and conditions as the Council shall from time to time decide; contribute to any such trust such sum or sums of money as the Council shall from time to time decide; from time to time appoint a trustee or trustees of any such trust; remove any such trustee from office and fill vacancies occurring in the office of trustee under any such trust; confer upon the trustee of any such trust all such powers and duties as the Council shall from time to time deem necessary or expedient; and generally do all such things and execute all such documents as the Council may from time to time deem necessary or expedient for any of the aforesaid purposes;
- (o) appoint auditors and determine their remuneration for the audit of the year concerned;
- (p) give the auditors appointed in terms of clause (o) at all times such access to the records, books and vouchers of the Association as they may require, and ensure that the auditors receive such information and explanations as they may require;
- (q) determine the price per metric ton of sucrose in cane and any other designated agricultural product in respect of each year not later than the end thereof, and estimate such price at the commencement of each year and thereafter monthly during the year for the purpose of enabling payments to be made to growers in accordance with the provisions of the Agreement;
- (r) impose levies in respect of industry obligations in accordance with the Agreement, and where in the exercise of its objects it is necessary or appropriate for the Association to raise money from a particular grower, miller or refiner or from a group of growers, millers or refiners in respect of expenditure which does not constitute an industry obligation as contemplated by the Agreement, impose levies on the appropriate group of growers, millers or refiners;
- (s) incur such expenditure as it may deem necessary or desirable in carrying out the powers granted to it hereunder and in order to enable the Association to attain its objects hereinbefore set out and to fulfil the functions ascribed to the Association under the Act, and the Agreement published thereunder;
- (t) consider and decide on the persons or classes of persons to whom or the trades to which rebates shall be made in relation to the purchase of any sugar industry products, and fix the amount or amounts of such rebates in which event the Association shall bear the cost of the rebate, the amount of which shall be an industry obligation;
- (u) open a banking account or accounts as provided in clause 6, and determine who shall be responsible for the operations thereof;
- (v) raise loans for such amounts and on such terms and conditions as the Association may think fit, and give security therefor;
- (w) grant loans with or without security for such amounts, on such terms and conditions, with or without interest, as the Association may determine;
- (x) invest money as provided in terms of clause 6 on such terms and conditions as the Council may decide.
- (y) institute, conduct or defend, settle or abandon any legal proceedings and compromise or submit to arbitration any claims by or against the Association or the Council; and
- (z) guarantee staff housing loans on such terms and conditions as may be prescribed.

## Finance

6. (1) The funds of the Association shall be banked in the name of South African Sugar Association, or in the name of any committee, fund, division or department of the Association duly appointed or established in terms hereof. An amount paid on behalf of the Association or any such committee, fund, division or department thereof shall be paid in such manner and under such authorizations as the Council may from time to time determine.
- (2) No profits or gains of the Association may be distributed to the members of the Association or any other persons and the funds of the Association shall be utilised solely for investment or the objects set out in clause 4.
- (3) The provisions of clause (2) shall not be interpreted to prevent the Association from authorising or empowering any company, the operations of which are ancillary or complementary to the objects of the Association and all the shares of which are held by the Association, to pay profits or gains made by such company into any stabilisation or similar fund, established in terms of the Agreement.
- (4) The funds of the Association shall be invested only with registered financial institutions as defined in section 1 of the Financial Institutions (Investment of Funds Protection of Funds) Act 28 of 2001, 1984, and/or in securities listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 Financial Markets Act, 19 of 2012, and shall be invested in the name of the South African Sugar Association, or in the name of any committee, fund division or department of the Association duly appointed or established in terms hereof. An amount paid on behalf of the Association or any such committee, fund, division or department thereof shall be paid in such manner and under such authorisations as the Council may from time to time determine.

## Meetings

7. (1) All meetings of the Association and of the Council shall be presided over by the Chairperson of the Association and in his or her absence by 1 of the 3 Vice-Chairpersons, failing which, by a chairperson elected by the meeting.
- (2) A general meeting of the delegates of the Association shall be held once in every year within six months after the close of the financial year at such time and place as may be determined by the Council. The purpose of this meeting shall be to consider the report by the Council on the year's working of the Association and the duly audited annual financial statements for the past year, to elect a Chairperson and the 3 Vice-Chairpersons, to appoint Councillors and alternates, and to conclude such other business as it is competent to attend to. The meeting may also transact any special business.
- (3) The Council may call a special meeting of the delegates of the Association whenever it deems it necessary and the Chairperson, or in his or her absence 1 of the 3 Vice-Chairpersons, shall call a special meeting of delegates of the Association whenever requested by either Section to do so. Particulars of the special business to be attended to at a general or special meeting of the Association shall be given in the notice calling the meeting.
- (4) (a) Subject to the provisions of clause 4 (b) at least 21 days' notice of every general and/or special meeting of the Association, shall be given to all delegates.  
(b) In the case of an emergency the Chairperson, or in his absence 1 of the 3 Vice-Chairpersons, may convene a special meeting on less than 7 days' notice.  
(c) Notwithstanding the provisions of clause (b), this Constitution shall not be amended at a special meeting of which less than 21 days' notice has been given.  
(d) The period of notice shall be calculated from the day of the posting or delivery of the said notice, whichever date is the earlier.
- (5) The quorum for any general meeting of the Association shall be 20 delegates personally present, of whom at least 10 shall be delegates from the Millers' Section, at least 5 shall be delegates from SACGA and at least 5 shall be delegates from SAFDA. The quorum for any special meeting of the Association shall be 11 delegates personally present, of whom at least 4 shall be delegates from the Millers' Section, at least 2 shall be delegates from SACGA and at least 2 shall be delegates from SAFDA. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or, if that date is a public holiday, to the next succeeding day other than a public holiday, and if at such adjourned meeting a quorum is not present, within half an hour from the time appointed for the meeting, the members present shall be a quorum.
- (6) Meetings of the Council shall be held as occasion may require, but at least once a quarter.
- (7) Subject to the provisions of clause 7 (8), at least 7 days' notice of every meeting of the Association's Council shall be given to all Councillors and the notice of the meeting must be accompanied by an agenda for the meeting and copies of all documents to be considered at the meeting, provided that the Chairperson may permit the consideration of, and by, any meeting of the Association's Council of any additional items not on the agenda and/or documents which did not accompany the meeting notice and on less than 7 days' notice including without any notice.
- (8) In the case of an emergency, the Chairperson, or in his absence 1 of their 3 Vice-Chairpersons, may convene a meeting of the Association's Council on less than 7 days' notice.
- (9) The period of notice given for meetings of the Association's Council shall be calculated from the day of posting or delivery of the said notice; whichever date is the earlier.
- (10) At meetings of the Council 9 Councillors or their alternates personally present shall form a quorum provided that:
  - a) they include at least 4 Councillors appointed by the Millers' Section and 4 Councillors representing the Growers Section;
  - b) of the Councillors representing the Growers' Section, at least 2 Councillors are nominated by SACGA and at least 2 Councillors are nominated by SAFDA.
- (11) If within half an hour from the time appointed for a meeting of the Council of the Association a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or, if that day is a public holiday, to the next succeeding day other than a public holiday; and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.
- (12) Unless otherwise determined by the Council -
  - (a) except for the Council's Local Pest, Disease and Variety Control Committee, and where otherwise agreed by Council, the Council's committees appointed in terms of clause 3(6) shall comprise 16 members, of whom 8 shall be nominated by the Millers' Section, 4 shall be nominated by SACGA for the Growers' Section and 4 shall be nominated by SAFDA for the Growers' Section;
  - (b) the Millers' Section may appoint 4 alternates to its committee members and SACGA and SAFDA may each appoint two alternates to their respective committee members;
  - (c) the quorum for each meeting of every Association committee shall be 40% of the members or their alternates of that committee personally present, provided that those present must include at least

2 representatives of the Millers' Section and one representative of each of SACGA and SAFDA, respectively.

- (13) The Council's Local Pest, Disease and Variety Control Committees shall comprise a minimum of 4 members, of whom 2 shall be nominated by the Millers' Section, 1 shall be nominated by SACGA for the Growers' Section and 1 shall be nominated by SAFDA for the Growers' Section. The Millers' Section may appoint 2 alternates to its nominees to Local Pest, Disease and Variety Control Committees and SACGA and SAFDA may each appoint 1 alternate to the Local Pest, Disease and Variety Control Committees.
- (14) The Department of Trade, Industry and Competition may attend as an observer at any meeting of the Association's Council.
- (15) Any member of either Section or any other person may by consent of the meeting attend as an observer any meeting of the Council or of any committee or subcommittee appointed by the Association or the Council.
- (16) The Association shall pay a total annual fixed fee to the Millers' Section, SACGA and SAFDA in respect of all the meetings associated with the business of the Association including but not limited to the Association's general, special, Council and committee meetings. The total annual fixed fee shall be for attendance at the meetings of at least sufficient representatives of each of the Millers' Section and SACGA and SAFDA respectively required to render each such meeting quorate. The total annual fixed fee is all inclusive and, without limiting the general scope of this provision, includes the costs of the Vice-Chairpersons and all costs of and associated with preparing for and attending meetings including all travel and subsistence costs. The Association shall pay half the total annual fixed fee to the Millers' Section and one quarter of the total annual fixed fee to SACGA and SAFDA respectively. The Association shall pay the total annual fixed fee in 4 equal quarterly instalments on 1 April, 1 July, 1 October and 1 January. The total annual fixed fee for the period from 1 April 2023 to 31 March 2024, both dates inclusive, shall be R13 993 090 and that amount shall escalate on 1 April each year thereafter starting from 1 April 2024 by the year on year change in the headline consumer price index, for all urban areas, for January as reflected in table P0141 or its successor as published by Statistics SA or its successor.

### **Voting**

8. (1) At general and special meetings of the Association each delegate shall be entitled to one vote. All questions arising at general and special meetings of the Association shall be determined by a majority representing at least two-thirds of the votes of the delegates present at the meeting provided that such majority must include at least 1 vote from the Millers' Section and the Growers' Section and that the votes from the Growers' Section must include at least 1 vote by a delegate representing SACGA and at least 1 vote by a delegate representing SAFDA. The Chairperson and the 3 Vice-Chairpersons shall not exercise a vote at such meetings. This shall not apply, however, to any delegate who may be appointed to take the chair at such meetings in the absence of the Chairperson or the 3 Vice-Chairpersons.
- (2) At all meetings of the Council each Councillor or, in his absence, his alternate, shall be entitled to one vote. All questions arising at meetings of the Association's Council shall be determined by a majority representing at least two-thirds of the votes cast, provided that such majority must include at least 1 vote of Councillors nominated by the Millers' Section and the Growers' Section and that the votes from the Growers' Section must include at least 1 vote by a Councillor nominated by SACGA and at least 1 vote by a Councillor nominated by SAFDA. The Chairperson and the 3 Vice-Chairpersons shall not exercise a vote at such meetings. This shall not apply, however, to any person who may be appointed to take the chair at such meetings in the absence of the Chairperson or the 3 Vice-Chairpersons.
- (3) At any special or general meeting of the Association's delegates or at any meeting of the Association's Council which has been adjourned for lack of a quorum, decisions shall be determined by a majority representing at least two-thirds of the votes of those present irrespective of whether those votes include at least 1 vote from the Millers' Section and at least 1 vote from the Growers' Section and irrespective of whether the vote from the Growers' Section includes votes from SACGA and SAFDA..
- (4) Unless otherwise determined by the Council -
  - (a) at all meetings of committees appointed in terms of clause 3(6), each member or in his absence his alternate, shall be entitled to one vote;
  - (b) all questions arising at such meetings shall be determined by a majority representing at least two-thirds of the votes cast provided that such votes must include votes of members (or in their absence, alternates) representing the Millers' Section and the Growers' Section and the votes from the Growers' Section must include at least 1 vote by a member representing SACGA and at least 1 vote by a member representing SAFDA;
  - (c) the Chairperson and the 3 Vice-Chairpersons of the Association, whether appointed to or as *ex-officio* members of such committees, shall not exercise a vote at such meetings.

### **Third parties**

9. In the event of the Association or Council refusing or neglecting to impose any levy which is required for the purpose of meeting any obligation or liability duly incurred by them with regard to any third party, such party shall be entitled to make application to the Court to compel the imposition of such levy to such extent

as may be required in accordance with the powers conferred in this Constitution, failing which, for an order authorising and directing that such levy shall be imposed by some person or persons duly appointed thereto by the Court.

#### **Indemnity**

- 10.** (1) Every member of the Council or of any committee appointed by it (and every employee of the Association) is hereby indemnified and held harmless by the Association against any personal liability incurred by him arising out of or in connection with the due and diligent exercise or performance by the Council or by any such committee of any of the powers and functions which are or may be conferred upon it by or pursuant to this Constitution. Any liability imposed upon the Association by this clause may be met by means of a levy imposed under clause 5 and shall for that purpose be deemed to be an industry obligation.
- (2) The provisions of this clause 10 (2) apply with effect from 1 April 2018.
- (a) Anything done from 1 April 2018 until 9 October 2018 relating to amendment of this Constitution in terms of section 2(2) of the Sugar Act, 9 of 1978 both dates included, and which is done in good faith to effect recognition and funding of SAFDA in accordance with, or to give effect to, or in anticipation of, the resolutions passed by the Association's Council on 15 March 2018 and 16 April 2018 and the Association at the special meeting on 16 April 2018 and the amendments to this Constitution and the Sugar Industry Agreement, 2000 promulgated in Government Gazette 41967 on 9 October 2018 and anything else done by the Association in good faith in order to effect recognition and funding of SAFDA, shall be deemed to be valid, to the extent permitted by law.
- (b) To the extent permitted by law, neither the Association nor any of its delegates, Councillors (including the Association's Chairperson and Vice-Chairpersons), members, members of its committees, employees, contractors or agents nor any miller, refiner nor grower shall be liable for anything done in good faith to recognise and fund SAFDA between 1 April 2018 and 9 October 2018 in accordance with, or to give effect to, or in anticipation of:
- (i) the resolutions passed by the Association's Council on 15 March 2018 and 16 April 2018;
- (ii) the resolutions passed by the Association at the special meeting on 16 April 2018;
- (iii) the amendments to this Constitution and the Sugar Industry Agreement, 2000 promulgated in Government Gazette 41967 on 9 October 2018; and
- (iv) anything else done by the Association in good faith in order to effect recognition and funding of SAFDA between 1 April 2018 and 9 October 2018, both dates included.

**Amendment of Constitution**

11. No amendment to this Constitution shall be made unless decided upon by a vote at a general or special meeting for which a period of notice has been given in accordance with the provisions of clause 7(4). Any such amendment shall be conditional upon the consent of the Minister (as contemplated in section 2 of the Act) being obtained for such amendment and the publication of such amendment in terms of section 2(2) of the Act. The publication of such amendment in terms of the said section shall be conclusive proof of the consent of the Minister concerned thereto. A copy of each amendment to the Constitution shall be submitted to the Commissioner of the South African Revenue Service.

**Dissolution of Association**

12. Any assets remaining after dissolution of the Association shall be transferred, whether by way of donation or otherwise, only to some other institution, board or body which has been granted exemption from income tax in terms of paragraph 10(1)(cA)(i) of the Income Tax Act, 1962, and whose objects are similar to those of the Association.

**Interpretation**

13. In this Constitution unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act or the Agreement shall have that meaning.

**Withdrawal of Government Notice**

14. Government Notice No. R860 of 27 April 1979 is hereby withdrawn.