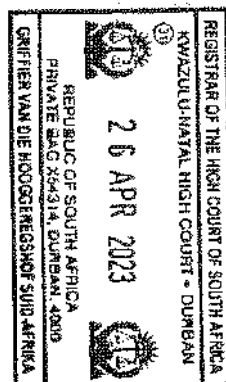


IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: Du472/2023

In the matter between:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)	Second Applicant
TREVOR JOHN MURGATROYD N.O.	Third Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Applicant
GERHARD CONRAD ALBERTYN N.O.	Fifth Applicant
and	
SOUTH AFRICAN SUGAR ASSOCIATION	First Respondent
S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fourth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Fifth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Sixth Respondent
RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED	Seventh Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED	Eighth Respondent
UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED	Ninth Respondent
GLEDHOW SUGAR COMPANY (PROPRIETARY) LIMITED	Tenth Respondent



HARRY SIDNEY SPAIN N.O

Eleventh Respondent

UCL COMPANY  
(PROPRIETARY) LIMITED

Twelfth Respondent

ALL REGISTERED GROWERS

Thirteenth to Twenty-Three  
Thousandth Respondents

THE AFFECTED PERSONS IN  
THL'S BUSINESS RESCUE

Twenty-Three Thousand and First  
Respondents and Further Respondents

**NOTICE OF MOTION**

**PART A: SUBSTITUTED SERVICE**

**TAKE NOTICE** that the first to fifth applicants ("the applicants") intend to make application to this Honourable Court on 13 JUNE 2023, or on a date to be arranged with the Registrar, for an order in the following terms -

**A**

1 The applicants are granted leave to give notice of the main application (being Part B of this notice of motion) by way of substituted service on the twelfth and further respondents in the following manner -

1.1 within five (5) days of the grant of this order in Part A -

1.1.1 the fifth and sixth respondents are directed to cause a copy of the complete founding papers to be emailed to each registered

1.1.2 grower registered with them, for whom they have email addresses on file;

1.1.3 the third to fifth applicants are directed to cause a copy of the complete founding papers to be emailed to each affected person in the first applicant's business rescue, for whom they have email addresses on file;

1.1.4 the first applicant and the first respondent are each directed to publish a link to the complete founding papers on their websites; and

1.1.5 the third to fifth applicants are directed to cause notice of the application, in the form of Annexure NOM1, in the following newspapers -

1.1.5.1 *Business Day*, in English;

1.1.5.2 *The Natal Mercury* in English and isiZulu; and

1.1.5.3 *The Mpumalanga News*, in English, isiZulu and siSwati.

2 The costs of Part A shall be costs in the main application (Part B).

3 Further and/or alternative relief.

**PART B: MAIN APPLICATION**

**TAKE NOTICE** that the first to fifth applicants ("the applicants") intend to make application to this Honourable Court, on \_\_\_\_\_ or on a date to be arranged with the Registrar, for an order in the following terms -

**B**

1 Declaring that the third to fifth applicants ("the BRPs") are empowered to suspend, for the duration of the business rescue proceedings, any obligation of the first applicant ("THL") which arises under the Sugar Industry Agreement, 2000 ("the SI Agreement"); alternatively any redistribution payment, and related levies and interest that become due in terms of clauses 183 and 184 of the SI Agreement, and which would otherwise become due during the business rescue proceedings.

2 Alternatively to prayer B1 above and in the event that the Court finds that the obligations under the SI Agreement are not amenable to suspension -

2.1 declaring section 136(2)(a)(i) of the Companies Act 71 of 2008 ("the Companies Act") unconstitutional and invalid insofar as its fails to provide for the suspension of regulatory charges that become due during business rescue proceedings; and

2.2 reading in the words "*or regulatory regime*" after the word "*agreement*" in section 136(2)(a)(i) of the Companies Act.

- 3 Declaring that respondents are precluded, in terms of section 133 of the Companies Act, from bringing legal proceedings, including enforcement action, against THL in respect of any payments that are owing under the SI Agreement.
- 4 Striking out or permanently staying the application instituted by the seventh respondent before the Sugar Industry Appeals Tribunal on 31 March 2023.
- 5 Ordering the seventh respondent to pay the applicants' costs in respect of the application instituted before the Sugar Industry Appeals Tribunal on 31 March 2023.
- 6 Directing any party that opposes this application to pay the costs thereof jointly and severally, including the cost of three counsel where three counsel have been employed.
- 7 Further and/or alternative relief.

**TAKE NOTICE FURTHER** that the accompanying affidavit of **PETRUS FRANCOIS VAN DEN STEEN** together with the annexures thereto will be used in support of this Application.

**TAKE NOTICE FURTHER** that the applicant has appointed **WERKSMANS ATTORNEYS**, The Central, 96 Rivonia Road, Sandton, Johannesburg, 2196 and **EVH INC ATTORNEYS**, Unit 4, Holwood Crescent, Holwood Park, La Lucia Ridge,

Umhlanga, 4319, at which addresses they will accept notice and service of all process in these proceedings.

**TAKE NOTICE FURTHER** that if any of the first to twelfth respondents intend opposing Part A or Part B of this application, you are required -

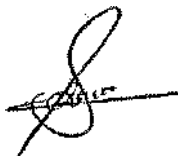
- (a) to notify the applicants' attorney in writing, within fifteen (15) days of receipt of this application of such intention to oppose and, in such notice, to appoint an address as referred to in rule 6 (5)(b) at which you will accept notice and service of all documents in these proceedings; and
- (b) within fifteen (15) days after you have given notice of your intention to oppose the application, to file your answering affidavits, if any;

**TAKE NOTICE FURTHER** that if any of the thirteenth and further respondents intend opposing Part B of the application, you are required -

- (a) to notify the applicants' attorney in writing, within twenty (20) days of compliance with the orders A 2.1 to 2.4 in Part A of such intention to oppose and, in such notice, to appoint an address as referred to in Rule 6 (5)(b) at which you will accept notice and service of all documents in these proceedings; and

- (b) within fifteen (15) days after you have given notice of your intention to oppose the application, to file your answering affidavits, if any.

DATED AT JOHANNESBURG 26 APRIL 2023



**WERKSMANS ATTORNEYS**

Applicants' Attorneys

11<sup>th</sup> Floor, The Central

96 Rivonia Road, Sandton

Email: [tboswell@werksmans.com](mailto:tboswell@werksmans.com) / [dhertz@werksmans.com](mailto:dhertz@werksmans.com)

[dandropoulos@werksmans.com](mailto:dandropoulos@werksmans.com) / [sgast@werksmans.com](mailto:sgast@werksmans.com)

Tel: +27 11 535 8459 / +27 11 535 8283 / +27 11 535 8248 / +27 11 535 8131

Ref: Mr T Boswell / Mr D Hertz / Mr D Andropoulos / Ms S Gast / TONG7430.11

**C/O EVH INC ATTORNEYS**

Unit 4, Holwood Crescent, Holwood Park

La Lucia Ridge, Umhlanga, 4319

Tel: +27 31 492 7971

Email: [erik@evhinc.co.za](mailto:erik@evhinc.co.za)

Ref: W2409/0005

TO:  
THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT  
DURBAN, KWAZULU-NATAL

AND TO:  
SOUTH AFRICAN SUGAR ASSOCIATION  
First Respondent  
C/O GARLICKE & BOUSFIELD  
Email: [howard.stephenson@qb.co.za](mailto:howard.stephenson@qb.co.za)

Service via email  
as per agreement  
between the parties

AND TO:  
S.A. SUGAR EXPORT CORPORATION  
(PROPRIETARY) LIMITED  
Second Respondent  
170 Flanders Drive, Mount Edgecombe, 4300

Service via Sheriff

AND TO:

**MINISTER OF TRADE AND INDUSTRY**

Third Respondent  
77 Meintjies Street, Sunnyside, Pretoria

**Service via Sheriff**

**AND TO:****SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC**

Fourth Respondent  
170 Flanders Drive, Mount Edgecombe, 4300  
Tel: +27 31 508 7300  
Email: [sasmal@sasa.org.za](mailto:sasmal@sasa.org.za)

**Service via Sheriff**

**AND TO:****SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC**

Fifth Respondent  
170 Flanders Drive, Mount Edgecombe, 4300  
Tel: +27 31 508 7200  
Email: [central@canegrowers.co.za](mailto:central@canegrowers.co.za)

**Service via Sheriff**

**AND TO:****SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC**

Sixth Respondent  
170 Flanders Drive, Mount Edgecombe, 4300  
Tel: +27 31 508 7283  
Email: [info@sa-fda.org.za](mailto:info@sa-fda.org.za)

**Service via Sheriff**

**AND TO:****RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED  
C/O WEBBER WENTZEL ATTORNEYS**

Seventh Respondent  
Email: [prelisha.singh@webberwentzel.com](mailto:prelisha.singh@webberwentzel.com) /  
[lara.kahn@webberwentzel.com](mailto:lara.kahn@webberwentzel.com) /  
[lubumba.kamukwamba@webberwentzel.com](mailto:lubumba.kamukwamba@webberwentzel.com)

**Service via email  
as per agreement  
between the parties**

**AND TO:****ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED  
C/O COX YEATS ATTORNEYS**

Elghth Respondent  
Email: [TScheepers@coxyeats.co.za](mailto:TScheepers@coxyeats.co.za) /  
[LMapiki@coxyeats.co.za](mailto:LMapiki@coxyeats.co.za) /

**Service via email  
as per agreement**



JRodd@coxyeats.co.za

between the parties

AND TO:  
**UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED**  
Ninth Respondent  
Corner Mill Road and Club Lane, Riverview,  
KwaZulu-Natal 3930

Service via Sheriff

AND TO:  
**GLEDHOW SUGAR COMPANY  
(PROPRIETARY) LIMITED**  
Tenth Respondent  
1 Gledhow Mill Road, Kwa-Dukuza, Kwa-Dukuza  
Kwa-Zulu Natal, 4450

Service via Sheriff

AND TO:  
**HARRY SIDNEY SPAIN N.O**  
Eleventh Respondent  
Unit 2 Hertford, 747 Musgrave Road, Durban

Service via Sheriff

AND TO:  
**UCL COMPANY (PROPRIETARY) LIMITED  
(PROPRIETARY) LIMITED**  
Twelfth Respondent  
16 Noodsberg Road, Dalton, KwaZulu-Natal

Service via Sheriff

AND TO:  
**ALL REGISTERED GROWERS**  
Thirteenth to Twenty-Three  
Thousandth Respondents

Substituted Service

AND TO:  
**THE AFFECTED PERSONS IN  
THL'S BUSINESS RESCUE**  
Twenty-Three Thousand and First  
Respondents and Further Respondents

Substituted Service

**NOTICE TO:****ALL REGISTERED GROWERS****ALL AFFECTED PERSON IN THE BUSINESS RESCUE OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL")**

This notice is addressed to all registered sugar cane growers, and to all affected persons in the business rescue process of THL.

This notice is published in this newspaper pursuant to an order granted by the High Court of South Africa, KwaZulu Natal Local Division, Durban on 3 JUNE 2023.

Take notice that the THL and its business rescue practitioners have brought an application to the High Court of South Africa, KwaZulu Natal Local Division, Durban under case number DULP21 2023 seeking the following order -

- 1 Declaring that the third to fifth applicants ("the BRPs") are empowered to suspend, for the duration of the business rescue proceedings, any obligation of the first applicant ("THL") which arises under the Sugar Industry Agreement, 2000 ("the SI Agreement") *alternatively* any redistribution payment, and related levies and interest that become due in terms of clauses 183 and 184 of the SI Agreement, and which would otherwise become due during the business rescue proceedings;
- 2 Alternatively to paragraph 1 above and in the event that the Court finds that the obligations under the Agreement are not amenable to suspension -
  - 2.1 declaring section 136(2)(a)(i) of the Companies Act 71 of 2008 ("Companies Act") unconstitutional and invalid insofar as its fails to provide for the suspension of regulatory charges that become due during business rescue proceedings; and
  - 2.2 reading in the words "*or regulatory regime*" after the word "*agreement*" in section 136(2)(a)(i) of the Companies Act;
- 3 Declaring that respondents are precluded, in terms of section 133 of the Companies Act, from bringing legal proceedings, including enforcement action, against THL in respect of any payments that are owing under the SI Agreement;
- 4 Striking out or permanently staying the application instituted by RCL Foods (Proprietary) Limited before the Sugar Industry Appeals Tribunal on about 31 March 2023;
- 5 Ordering RCL Foods (Proprietary) Limited to pay the applicants' costs in respect of the Sugar Appeals Tribunal application; and

- 6 Directing any party that opposes this application to pay the costs jointly and severally, including the cost of three counsel where three counsel have been employed.

Take notice further that THL and its business rescue practitioners have cited you as respondents in the application. You are therefore entitled to (i) receive a copy of the application, (ii) take independent legal advice and (iii) participate in the application. Please contact THL and the business rescue practitioners attorneys, Werksmans Attorneys, within fifteen (15) business days of publication of this notice, to obtain a copy of the founding papers in the application, in electronic format, at no cost to yourself.

Their details are:

Werksmans Attorneys

Ref: Trevor Boswell / Simone Gast

Tel: +27 11 535 8459 / +27 535 8131

Email: [tboswell@werksmans.com](mailto:tboswell@werksmans.com) / [sgast@werksmans.com](mailto:sgast@werksmans.com)

Should you elect to oppose the application, you may file notice of intention to oppose the application by no later than \_\_\_\_\_, and your opposing days within fifteen (15) business days after filing your notice of intention to oppose.

IN THE HIGH COURT OF SOUTH AFRICA  
 KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: \_\_\_\_\_

In the matter between:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)	Second Applicant
TREVOR JOHN MURGATROYD N.O.	Third Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Applicant
GERHARD CONRAD ALBERTYN N.O.	Fifth Applicant
and	
SOUTH AFRICAN SUGAR ASSOCIATION	First Respondent
S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fourth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Fifth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Sixth Respondent
RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED	Seventh Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED	Eighth Respondent
UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED	Ninth Respondent
GLEDHOW SUGAR COMPANY (PROPRIETARY) LIMITED	Tenth Respondent

*AM*

HARRY SIDNEY SPAIN N.O	Eleventh Respondent
UCL COMPANY (PROPRIETARY) LIMITED (PROPRIETARY) LIMITED	Twelfth Respondent
ALL REGISTERED GROWERS	Thirteenth to Twenty-Three Thousandth Respondents
THE AFFECTED PERSONS IN THL'S BUSINESS RESCUE	Twenty-Three Thousand and First Respondents and Further Respondents

### FOUNDING AFFIDAVIT

I, the undersigned,

**PETRUS FRANCOIS VAN DEN STEEN**

do hereby make oath and say –

- 1 I am an adult male, and a director of Metis Strategic Advisors (Proprietary) Limited ("Metis"). Metis has its registered address situate at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.
- 2 I am one of three jointly appointed business rescue practitioners of the first applicant, Tongaat Hulett Limited (in business rescue) ("THL"). I am authorised to depose to this affidavit in my capacity as such. For ease of reference, I refer to the third applicant, the fifth applicant and myself collectively as "the BRPs".
- 3 The third and fifth applicants support this application, as appears from their confirmatory affidavits attached hereto marked "FA1" and "FA2", respectively.



- 4 The facts contained in this affidavit are, unless the contrary appears from the context, or relate to a period prior to the BRPs' appointment, within my personal knowledge and are, to the best of my belief, both true and correct.
- 5 Mr David Evan Howells ("Mr Howells") has been appointed by THL as the Managing Director of Tongaat Hulett Sugar South Africa (Proprietary) Limited ("THSSA"). THSSA is THL's agent for all matters of and concerning THL's participation in the sugar industry pursuant to the conclusion of a written agency agreement between THL and THSSA. Ultimately, all the rights and obligations under the Sugar Industry Agreement dealt with more fully below are rights and obligations of THL.
- 6 Prior to Mr Howells taking up the position above, he occupied the position of Managing Director of Illovo Sugar (South Africa) (Proprietary) Limited ("Illovo Sugar") for a period of nine years. Illovo Sugar is the eighth respondent in this application. Mr Howells has been engaged in the South African sugar industry for approximately 28 years and is suitably qualified to confirm the facts in this affidavit insofar as they relate to how the sugar industry operates.
- 7 In dealing with the factual content of this affidavit, I have relied on the advice received from Mr Howells, whose confirmatory affidavit is attached marked "FA3".



## OVERVIEW OF THIS APPLICATION

- 8 On or about 27 October 2022, THL was placed into voluntary business rescue following a determination by THL's Board of Directors ("the Board") that although THL was financially distressed, there was a reasonable prospect that it could be rescued. A copy of the THL's Board resolution ("the Board Resolution") in terms of section 129 of the Companies Act 71 of 2008 ("Companies Act") and the notice and confirmation certificate for the commencement of the business rescue proceedings are attached as "FA4" and "FA5" respectively.
- 9 The third applicant, fifth applicant and I were appointed as THL's joint business rescue practitioners in terms of the Board resolution (I refer to the third applicant, fifth applicant and myself collectively as "the BRPs"). A copy of our notice of appointment is annexed as "FA6".
- 10 I understand that one of the purposes which the Companies Act strives to achieve is to provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders.
- 11 The purpose of business rescue is to aid a financially distressed company to maximise the likelihood of the company continuing its existence on a solvent



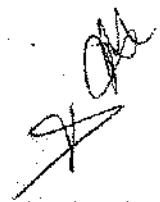
basis for the benefit of the company, its shareholders, its employees, and its creditors.

12 Stated differently, the purpose of business rescue is to facilitate the rehabilitation of a company that is financially distressed by creating a protective environment within which the company can develop and implement (if approved by creditors) a plan that will restructure its affairs, the business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis, or, if that is not possible, result in a better return to its creditors or shareholders than would otherwise result from the immediate liquidation of the company. That protection is created primarily through -

- 12.1 a moratorium on legal proceedings being brought against the company in terms of section 133 of the Companies Act;
- 12.2 the suspension and/or cancellation of the company's obligations, at the behest of the BRPs, in terms of section 136(2) of the Companies Act; and
- 12.3 empowering the BRPs to investigate the company's affairs, consult with affected persons, and to prepare a business rescue plan which, if adopted, ought to ensure its recovery and allow for payment to be made to its creditors.



- 13 To that end, since our appointment, the BRPs have been managing THL's affairs, investigating its potential to be rescued, and preparing a proposed business rescue plan.
- 14 THL is in financial distress. Its rescue is being investigated. At present, THL has approximately 1,000 creditors, with cumulative proved claims aggregating to approximately R10,4 billion.
- 15 Of those proved claims, 15 are secured and aggregate to a cumulative amount of R8 billion. All THL's assets are encumbered: the IDC has taken cession of its bank accounts and debts, and its remaining secured creditors hold security over all its remaining assets.
- 16 A substantial proportion of THL's debts – currently aggregating to approximately R1,423 billion – is owed to the first respondent ("SASA"), having arisen pursuant to the Sugar Industry Agreement, 2000 ("the SI Agreement") of which R1,002 billion has become due during the business rescue proceedings. I describe those payments obligations in detail below.
- 17 A copy of the SI Agreement is attached marked "FA7".
- 18 Plainly put, THL does not have the cash flow to discharge all its payment obligations; however, for the reasons set out below, the BRPs reasonably believe that THL is capable of being rescued.



19 If THL is ordered to immediately pay the amounts that have become due (subsequent to THL having entered business rescue) under the SI Agreement, the prospect of THL's rescue would be undermined which would be catastrophic for THL and all affected persons. THL's affected persons include -

19.1 their current creditors, which include, *inter alia*, its lenders, post-commencement financiers, and trade creditors which include, but are not limited to their supplying growers - a large percentage of which are black small-scale growers;

19.2 THL shareholders;

19.3 a number of trade unions dealt with through the Sugar Millers and Refiners Employers Association (SMREA) in a collective bargaining council arrangement; and

19.4 approximately 2,500 employees.

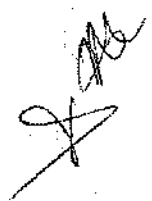
20 Also affected will be the South African sugar industry generally, a number of industrial sugar customers, household sugar and sweetener consumers, a multitude of service industries who service the entire sugar supply chain, the entire KwaZulu-Natal Province and, indeed, the South African public.

21 In order to temporarily insulate THL from onerous obligations that would prevent it from being rescued, on or about 24 February 2023, the BRPs determined to



suspend all of THL's payments obligations arising under the SI Agreement for the duration of the business rescue proceedings in terms of section 136(2) of the Companies Act.

- 22 A copy of the BRPs notice of suspension is attached as "FA8".
- 23 I am advised that the BRPs were empowered to suspend THL's obligations arising from the SI Agreement pursuant to section 136(2)(a) of the Companies Act.
- 24 The SI Agreement is an agreement for the purposes of that provision, and it empowers the BRPs to suspend the onerous obligations that arise under the SI Agreement (which are detrimental to the rescue of THL and prejudicial to its stakeholders) for the duration of the business rescue proceedings.
- 25 The Companies Act contemplates that obligations arising under an agreement to which the company was a party at the commencement of the business rescue proceedings may be suspended by the business rescue practitioner. It is clear from the definition of "agreement", as read together with section 136(2)(a) of the Companies Act, that the Legislature must have intended to empower a business rescue practitioner to suspend any obligation that, if not otherwise suspended, would make it impossible to rescue the company. This would defeat the *entire* purpose of Chapter 6 of the Companies Act.



- 26 Section 7(k) of the Companies Act stipulates that the purpose of the Companies Act (which includes Chapter 6 thereof) is, *inter alia*, to -

*"provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders",*

which supports the conclusion that in amending the Companies Act in 2011 to include Chapter 6, the Legislature must have contemplated that agreements, such as the SI Agreement, were capable of suspension by business rescue practitioners.

- 27 SASA is, in any event, precluded from bringing a claim to enforce payments of the amounts owing under the SI Agreement for the duration of the business rescue, in terms of section 133 of the Companies Act.

- 28 SASA has disputed both the BRPs' entitlement to suspend payment obligations under the SI Agreement, and the preclusion on its instituting legal process to enforce payment. SASA contends that the SI Agreement is wholly regulatory in nature, and consequently does not qualify as an agreement for the purposes of section 136(2)(a) of the Companies Act. SASA also contends that any proceedings it brings to enforce payment will constitute proceedings brought by a regulatory authority in the execution of its duties, within the meaning of section 133(1)(f) of the Companies Act. The applicants dispute both these contentions.

- 29 As appears from what is set out below, SASA has issued a letter of demand, and reserved its right to bring enforcement proceedings to compel THL to make payment to it.
- 30 There is clearly a dispute between the BRPs and SASA as to the application of sections 136(2)(a) and 133(1)(f) of the Companies Act in respect of the obligations that arise under the SI Agreement. It is in the interests of justice (and of THL and its affected persons) that the appropriate declaratory relief be granted, as to the BRPs powers to suspend THL's payment obligations arising under the SI Agreement, and SASA's ability to enforce payment of those obligations.
- 31 In the event that the above Honourable Court finds that the SI Agreement is a regulatory obligation that does not qualify as an agreement which is capable of suspension under section 136(2)(a) of the Companies Act, then the applicants contend that section 136(2)(a) of the Companies Act is under-inclusive and accordingly irrational and unconstitutional to the extent that it does not apply to payment obligations in terms of a regulatory regime or by virtue of statutorily imposed obligations.
- 32 Unless the BRPs have the power to suspend payment obligations of this nature, Chapter 6 of the Companies Act will be rendered incapable of achieving the very object of business rescue in highly regulated industries like the South African sugar industry.



- 33 To this extent, section 136(2)(a) of the Companies Act is unconstitutional and invalid.

#### PURPOSE OF THIS APPLICATION

- 34 This application is brought primarily to secure the declaratory or alternative constitutional relief set out above.
- 35 The South African sugar industry, and the Minister of Trade, Industry and Competition, have an interest in that relief, and must be joined in the application, as must all affected persons to THL's business rescue. Given the sheer number of sugar industry participants and affected persons, they cannot all be personally cited and served. The applicants accordingly seek an order for substituted service in respect of those interested parties, in Part A of the notice of motion.
- 36 In addition, the seventh respondent ("RCL Foods"), has instituted impermissible and fatally defective proceedings before the Sugar Industry Appeals Tribunal seeking declaratory relief ("RCL Foods' application"). The eighth respondent, Illovo Sugar, has (through its attorneys, Cox Yeats) indicated its intention to support RCL Foods in those proceedings.
- 37 RCL Foods' application is brought in contravention of section 133 of the Companies Act, and for, *inter alia*, that reason, is incompetent and impermissible. The applicants therefore seek an order striking RCL Foods'




application; alternatively permanently staying RCL Foods' application and directing RCL Foods to pay the applicants' costs in relation thereto.

#### **PARTIES TO THIS APPLICATION**

*(i) The applicants*

- 38 The first applicant is **TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)**, a public company duly incorporated and registered in accordance with the company laws of South Africa, with registration number 1892/000610/06, currently in business rescue. THL's registered address is at Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal.
- 39 The second applicant is **TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)**, a public company duly incorporated and registered in accordance with the company laws of South Africa, with registration number 1965/000565/06, currently in business rescue. THSSA's registered address is at Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal. THSSA is a wholly owned subsidiary of THL, and as set out above, has been appointed as THL's agent to deal with all matters of and concerning the South African sugar industry pursuant to the conclusion of a written agency agreement between THSSA and THL.
- 40 The third applicant is **TREVOR JOHN MURGATROYD N.O.**, an adult male director of Metis with his business address at Jindal Africa Building, 22 Kildoon



Road, Bryanston, Johannesburg. Mr Murgatroyd is also a duly appointed joint business rescue practitioner of THL.

41 I am the fourth applicant (in my capacity as a duly appointed joint business rescue practitioner of THL).

42 The fifth applicant is **GERHARD CONRAD ALBERTYN N.O.**, an adult male contractor of Metis with his business address at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg. Mr Albertyn is also a duly appointed joint business rescue practitioner of THL.

(ii) *The respondents*

43 The first respondent is the **SOUTH AFRICAN SUGAR ASSOCIATION ("SASA")**, a juristic entity incorporated and constituted in terms of section 2 of the Sugar Act 9 of 1978 ("the Sugar Act"). SASA's principal place of business is located within the jurisdiction of the above Honourable Court at Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal, 4300.

44 The second respondent is **S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED ("Sasexcor")**, a company duly registered in terms of the Company Laws of the Republic of South Africa with registration number 1967/00009/07. Sasexcor's registered address is situated within the jurisdiction of the above Honourable Court at 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal South Africa.



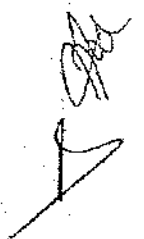
- 45 The third respondent is the **MINISTER OF TRADE, INDUSTRY AND COMPETITION** ("The Minister"), the executive authority responsible for administering the Sugar Act, including by determining the terms of the SI Agreement in terms of section 4, as well as the Companies Act. The Minister's address for service is 77 Meintjies Street, Sunnyside, Pretoria, Gauteng. The Minister is joined in this application pursuant to Rule 10A of the Uniform Rules of Court.
- 46 The fourth respondent is **SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC** ("SASMA"). SASMA's principal place of business is located within the jurisdiction of the above Honourable Court at Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal, 4300. All domestic millers and refiners are required to be members of SASMA, and it (i.e. SASMA) represents all domestic millers and refiners in industry engagements, negotiations, agreements, and arrangements, including when it participates in SASA matters.
- 47 The fifth respondent is the **SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC** ("SACGA"). SACGA's principal place of business is located within the jurisdiction of the above Honourable Court at Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal, 4300.
- 48 The sixth respondent is the **SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC** ("SAFDA"). SAFDA's principal place of business is

located within the jurisdiction of the above Honourable Court at Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal, 4300.

- 49 All domestic sugarcane growers are obliged to be members of either SACGA or SAFDA, and they represent the growers in industry engagements, negotiations, agreements, and arrangements, including when they participate in SASA.
- 50 In terms of the SASA Constitution (as amended), SACGA and SAFDA have equal representation on SASA. For ease of reference I refer to SACGA and SAFDA collectively as "the Growers' Section".
- 51 As the industry representatives, the Growers' Section are parties to the SI Agreement and the arrangements to which the SI Agreement gives effect, which means the Growers' Section has a direct and material interest in the declaratory and alternative constitutional relief sought by the applicants in this application.
- 52 The seventh respondent is **RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED**, a private company duly incorporated and registered in accordance with the laws of South Africa under registration number 1947/026583/07. RCL Foods' registered address is within the jurisdiction of the above Honourable Court at 10 The Boulevard, Westway Office Park, Westville, Kwa-Zulu Natal, 3629.



- 53 RCL Foods is joined in this application because the applicants impugn the competence of RCL Foods' application, and for such interest as it has in the interpretation and application of the SI Agreement.
- 54 The eighth respondent is **ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED** ("Illovo Sugar"), a private company duly incorporated and registered in accordance with the laws of South Africa under registration number 1915/000879/07. Illovo Sugar's registered address is within the jurisdiction of the above Honourable Court at 1 Nokwe Avenue, Ridgeside, Umhlanga Ridge, Kwa-Zulu Natal, 4320. Illovo Sugar is joined for such interest as it may have, given that it is, through SASMA, a party to the SI Agreement, as well as in light of its recordal that it intended to participate in RCL Foods' application.
- 55 The ninth respondent is **UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED** ("Umfolozi Sugar"), a private company duly incorporated and registered in accordance with the laws of South Africa under registration number 2008/012011/07. Umfolozo Sugar's registered address is within the jurisdiction of the above Honourable Court at Corner Mill Road and Club Lane, Riverview, KwaZulu-Natal 3930. It is joined for such interest as it may have, given that it is, through SASMA, a party to the SI Agreement.
- 56 The tenth respondent is **GLEDHOW SUGAR COMPANY (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)** ("Gledhow Sugar"), a private company duly incorporated and registered in accordance with the laws of South Africa under



registration number 2008/029/123/07. Gledhow Sugar's registered address is within the jurisdiction of the above Honourable Court at 1 Gledhow Mill Road, Kwa-Dukuza, Kwa-Dukuza, Kwa-Zulu Natal, 4450. It is joined for such interest as it may have, given that it is, through SASMA, a party to the SI Agreement.

- 57 The eleventh respondent is **HARRY SIDNEY SPAIN N.O** ("Mr Spain"), an adult male business rescue practitioner with identity number 4405105013087 with residential address within the jurisdiction of the above Honourable Court at Unit 2 Hertford, 747 Musgrave Road, Durban. Mr Spain is the duly appointed business rescue practitioner of Gledhow Sugar.
- 58 The twelfth respondent is **UCL COMPANY (PROPRIETARY) LIMITED** ("UCL"), a private company duly incorporated and registered in accordance with the laws of South Africa under registration number 2005/017711/07. UCL's registered address is within the jurisdiction of the above Honourable Court at 16 Noodsberg Road, Dalton, KwaZulu-Natal. It is joined for such interest as it may have, given that it is, through SASMA, a party to the SI Agreement.
- 59 The thirteenth to twenty-three thousandth respondents are the members of SACGA and SAFDA who comprise all of the registered sugar cane growers. They have an interest in these proceedings as parties to the SI Agreement. Given their number, it is not feasible to individually cite and serve each of the growers, and they will be served by way of substituted service in the event that this Honourable Court so directs.

60 The twenty-three thousand and first respondent and further respondents are the affected persons in THL's business rescue. They are entitled to be joined in this application pursuant to the provisions of section 128 of the Companies Act, as read together with sections 144(3)(b) and (f), 145(1)(a),(b) and (c), 145(2)(a) and 146(a),(b),(c) and (d) of the Companies Act. They are also joined because it will affect the conduct (and, possibly, the outcome) of THL's business rescue. Again, they are too numerous to cite and serve individually, and substituted service is sought in respect of them.

61 As appears from what is set out above, the applicants seek costs against RCL Foods in respect of RCL Foods' application. No other costs will be sought against the respondents in this application except to the extent that such respondents oppose this application.

#### THE CONTEXT IN WHICH THIS APPLICATION ARISES

62 At its core, this is an application in relation to and concerning THL's business rescue.

63 THL is the oldest sugar milling company in South Africa and has operated for more than 100 years in this sector. Its oldest mill, the Maidstone Mill, was established in 1903 and has operated continuously since then.

64 Today, in South Africa, THL owns and operates three sugar mills (a fourth has recently closed), one standalone central refinery, an animal feeds plant, and

agricultural estates, and it trades with the market leading "Hulett's" Sugar and "Voermol" Animal Feeds brands. THL's production facilities in South Africa, Zimbabwe and Mozambique have the capacity to crush approximately 12,7 million tons of sugarcane (the majority of which is provided by third-party growers), and to produce 1,5 million tons of raw sugar, 750,000 tons of refined sugar, 400,000 tons of animal feed and 40 million litres of ethanol (in Zimbabwe) annually.

65 THL is a mainstay of the South African sugar industry, and a major contributor to the economic and socio-economic development of KwaZulu-Natal and South Africa. In amplification -

65.1 although THL's production share of the South African industry has declined slightly in recent years, it remains a major industry player, producing between 25% and 27% of the volume of sugar produced domestically per year. Together with RCL Foods and Illovo Sugar, THL is one of the three major sugar producers in South Africa and is by far the industry's major producer of refined sugar, producing in excess of 40% currently of the industry's requirements at THL's central refinery;

65.2 THL's refining facility is used not only for its own production, but also at times utilised through bilateral agreements with other millers such as Illovo Sugar pursuant to refining tolling agreements. This serves these millers not only to supply their customer base, but crucially ensures that the South African industry is able to supply the needs of the local market

and that the industry is not forced to export greater volumes of low-priced raw sugar onto the world market at a loss to the industry;

65.3 THL employs thousands of people in South Africa, Zimbabwe, Botswana, and Mozambique and is one of the largest employers in KwaZulu-Natal. At the peak of the sugar season, THL's operations directly employ more than 23,000 people and creates more than 185,000 employment opportunities;

65.4 THL sources the majority of its sugarcane from independent farmers, providing a livelihood to more than 21,000 farmers. In this regard, more than 15,000 of such independent farmers are small-scale farmers and co-operatives. THL has a transformation partnership with Uzinzo Sugar Farming. Mr Howells has advised me that this is the largest black-owned grower in the South African sugar industry;

65.5 THL has been, and still remains, a major contributor to the economic and socio-economic development of KwaZulu-Natal and South Africa. It has been estimated, in an independent assessment of THL's economic footprint (an extract of which is attached as "FA9"), that during the 2021 financial year, an additional approximately R28.8 billion of output was produced within the South African economy arising from THL's trading activities, contributing approximately R11.0 billion to the GDP of the country (based on direct, indirect, and induced impacts); and



65.6 through its Socio-economic Development programme, THL has invested approximately R100 million in health-related activities, more than R60 million in COVID-19 initiatives above and beyond the healthcare investment, R5.5 million towards environmental and sustainability programmes and R6.8 million in education initiatives.

66 THL's inability to be rescued would be calamitous to the South African sugar industry and would have serious ramifications for the economy of KwaZulu-Natal and nationally.

(i) *THL's business rescue*

67 Despite its history and operational strength, THL has fallen on hard times. Its financial challenges arise from a combination of factors.

68 On the one hand, THL faces ongoing financial difficulties endemic to the sugar industry. In this regard, the domestic sugar industry is under constant threat of dumping by cheaper sugar imports. Moreover, the industry has suffered from the impact of droughts and, recently, has suffered the negative impact of a reduction of consumption of sugar pursuant to the introduction of the Health Promotion Levy (otherwise known as Sugar Tax).





69 In addition –

69.1 the participants in the sugar industry have entered into a co-operative arrangement to protect, maximise, and sustain the domestic sugar industry by entering into the SI Agreement. I refer to this as **"the revenue sharing arrangement"** and I describe it in detail below. In essence, the revenue sharing arrangement entails millers and refiners maximising their sugar production and sales into the domestic market (so as to maintain the volumes of cane that they buy and process, their production levels, and protect the employment associated with both). That invariably results in a supply of sugar that exceeds domestic demand – with the result that excess supply must be sold into the export market at a loss. **By agreement** among the sugar industry participants and government, and in order to protect the viability of each of them, millers maximise their sales into the domestic market but overwhelmingly only receive the benefit of such sales in proportion to the volume of the total product that they produce; and

69.2 whilst this is good for the sustainability of the industry as a whole, THL is disadvantaged by this arrangement - due to the large production capacity of its refinery and the strength of its brand, it refines and sells in excess of 40% of the refined white sugar purchased in the domestic market, but it is only entitled to retain the proceeds of those sales according to the proportion of total sugar products it is responsible for producing across the whole industry (about 27%). THL therefore pays

a substantial proportion of its refined white sugar proceeds over to SASA for redistribution to other competitor millers who have sold less than their production share. Refined white sugar is the most expensive sold domestically when compared to the categories of brown sugar and molasses.

70. THL has also experienced financial challenges within its business. During 2019, THL (with the assistance of PriceWaterhouseCoopers) uncovered certain detrimental practices undertaken under its previous management which resulted in re-statements to its published financial statements. In this regard, proceedings have been instituted against certain erstwhile members of THL's Board (which proceedings remain ongoing) as well as its erstwhile auditors, Deloitte & Touche (which have become settled).
71. To alleviate its precarious financial position, THL embarked on a turnaround strategy and engaged in negotiations with its South African and Mozambican lenders, with the aim of reducing its high levels of debt to sustainable levels. Among others, a consortium of South African lenders ("the SA Lenders") extended THL credit, with debt repayments due according to set milestones.
72. However, the COVID-19 pandemic and the July 2021 riots (which were concentrated in KwaZulu-Natal) placed significant pressure on THL's ability to meet the debt repayment milestones set by the SA Lenders. To address this, THL entered into a series of debt refinancing arrangements ("refinancing arrangements") with the SA Lenders in December 2021. Those refinancing



arrangements set a deadline (31 March 2022) by which date THL had to raise funding by way of an equity capital raise. If THL failed to meet this deadline, it was required to embark on a process that would ultimately lead to the sale of its core sugar assets.

- 73 THL's Board determined that the disposal of THL's sugar businesses to fund debt repayment would be to the major detriment of its employees, shareholders, and other stakeholders, and would, in effect, reduce a significant income producing trading company to a landholding company. At that stage, the THL Board considered that the only prudent means of reducing debt owing to the SA Lenders to sustainable levels was through an equity capital raise.
- 74 On 18 January 2022, THL's shareholders voted in favour of the resolutions necessary to proceed with a rights offer of up to R4 billion underwritten by a third party, including the waiver of the requirement for such third party to make a formal offer for all of THL's shares in terms of the Companies Act. For reasons irrelevant to an adjudication of this application, the rights offer was unsuccessful.
- 75 While the rights offer was on hold, THL was again faced with negative unforeseen events that placed further pressure on liquidity, including the April 2022 floods in KwaZulu-Natal and the Russia-Ukraine war. The war between Russia and Ukraine has resulted in significant cost increases in commodities and raw materials such as coal, fertiliser, and urea.

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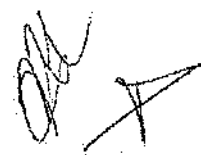
76 The challenges described above meant that THL's cash flow performance on 31 March 2022 was considerably worse than had been forecast as part of the debt refinance. Consequently, a shortfall of approximately R1.5 billion emerged in THL's debt facilities available to fund its peak working capital funding requirement necessary to complete the 2023 financial year.

77 In the light of what is set out above, THL's Board determined that THL was financially distressed as contemplated in section 128 of the Companies Act. On 26 October 2022, the Board resolved to commence with voluntary business rescue proceedings for THL in terms of section 129 of the Companies Act. THL's Board did so because it was, and remains, of the considered opinion that there is a reasonable prospect of rescuing THL through the business rescue proceedings.

78 The business rescue filing was lodged with CIPC on 27 October 2022 and the business rescue proceedings commenced on the same date. I have already attached a copy of the Board resolution, the notice and confirmation certificate for the commencement of the business rescue proceedings, as well as the certificate of the BRPs' appointments on 27 October 2022.

(ii) *The purpose and effect of business rescue*

79 Prior to the 2011 amendment of the Companies Act and the introduction of the provisions of Chapter 6, the only option available for creditors and stakeholders of financially distressed companies was to make application for the liquidation



or judicial management of the company concerned in the hope that they would (at least) enjoy a partial recovery of debts owing by the company.

80 The business rescue provisions were introduced as a mechanism to allow a financially distressed company "breathing room" to restructure its affairs whilst continuing to trade, in the hope of enabling it to rehabilitate itself.

81 When successful, business rescue can ensure the survival of the company in question and, in turn, the survival of the commercial relationship between the company and its creditors, as well as the preservation of jobs that the company provides. Even where the company is ultimately unable to trade out of its financial distress and continue on a solvent basis, business rescue may result in a better return for its creditors and shareholders than if that company was immediately liquidated.

82 The purpose of business rescue is to afford the company a protective environment during the business rescue proceedings, in which to consult on and develop a business rescue plan which, if approved, can be implemented to achieve a financial restructuring intended to improve the company's financial position to attempt to avoid liquidation and ultimately continue to trade as a going concern. If this objective cannot be achieved and the company cannot be restored to solvency, entering business rescue is then aimed at providing a better return for creditors and employees than would otherwise be yielded if the company was immediately placed into liquidation.

83 Certain features of business rescue are essential to its object (as is clear from the definition of business rescue contained in section 128(b) of the Companies Act). In this regard -

83.1 the company must be placed under the temporary supervision and management of one or more registered business rescue practitioners. These business rescue practitioners oversee the company during rescue, and have full management control of the company, in terms of section 140 of the Companies Act. Essentially, business rescue practitioners step into the shoes of the company's board;

83.2 in business rescue a protective environment is created and is achieved through a series of provisions, including the following -

83.2.1 section 133 of the Companies Act which creates a general moratorium on legal proceedings and enforcement action against a company in business rescue, or any property belonging to it or in its lawful possession. Subject to certain stipulated exceptions, section 133 precludes any legal proceedings being commenced or proceeded with in any forum for the duration of the business rescue process;

83.2.2 section 134(c) of the Companies Act, which provides that no person may exercise any rights in respect of property in the lawful



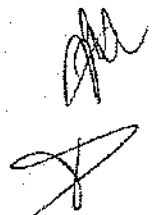
possession of the company, except to the extent its business rescue practitioners consent in writing thereto;

83.2.3

section 135(1) of the Companies Act which protects employees by providing for remuneration, reimbursement for expenses and any other money relating to employment that becomes due and payable during the business rescue process, to be treated as post-commencement finance and repaid only at the end of the business rescue process;

83.2.4

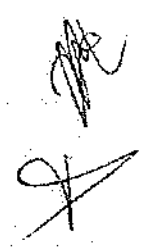
section 136(2) of the Companies Act which empowers the business rescue practitioners entirely, partially or conditionally to suspend, or with the leave of the court cancel, any obligation of the company that arises under an agreement to which the company was a party at the commencement of the business rescue proceedings and which would otherwise become due during the course of those proceedings (with the legislated exception of employment contracts and agreements to which section 35A and 35B of the Insolvency Act would have applied if the company had been liquidated). An "agreement" is defined widely in section 1 of the Companies Act to include "a contract, or an arrangement or understanding between or among two or more parties that purports to create rights and obligations between or among those parties" (emphasis added);



83.2.5 section 137 of the Companies Act which stipulates that any alteration in the classification or status of any issued securities of a company (other than by way of transfer in the ordinary course of business) is invalid unless a court directs otherwise, or it is contemplated in an approved business rescue plan; and

83.3 if the business rescue practitioners believe that there is a reasonable prospect that the company can be rescued, the business rescue practitioners *must* prepare and propose a business rescue plan for consideration and adoption by the company's creditors (and, if applicable, the company's shareholders) and any other holders of a voting interest. This plan is required to specify the basis upon which the debt of the company is to be repaid and/or the extent to which debts will become unenforceable and plot the course for rescuing the company by achieving the goals set out in section 128(1)(b) of the Companies Act. Once published by the business rescue practitioners, the plan is put to a vote to ensure that affected persons (especially creditors) are permitted to participate in the future of the company and its ability to continue trading.

84 I pause to highlight that the protective environment that Chapter 6 imposes is necessarily far reaching. This environment is intended to afford the business rescue practitioners the broadest possible scope to restructure and rescue the company and secure the economic benefits that the company creates.





(iii) *The suspension of THL's obligations under the SI Agreement*

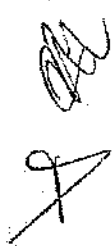
85 THL has a number of payment obligations that have become due in terms of the SI Agreement following it (i.e. THL) having commenced business rescue. A dispute has arisen between the applicants and SASA as to whether those obligations may be suspended under section 136(2)(a) of the Companies Act and/or whether enforcement proceedings in respect of their payment is precluded by section 133 of the Companies Act.

86 Those disputes turn on -

86.1 whether the SI Agreement is *an agreement* within the meaning of section 136(2)(a) of the Companies Act, as read together with the definition of "agreement" in section 1 thereof. In other words, whether the SI Agreement constitutes a *"contract, or an arrangement or understanding between or among two or more parties that purports to create rights and obligations between or among those parties"*; and

86.2 whether, in seeking payment of the amounts owing under the SI Agreement, SASA acts *"in the execution of ... duties"* as a *"regulatory authority"*, within the meaning of section 133(1)(f) of the Companies Act.

87 To address those issues, I turn to describe the South African sugar industry, and the revenue sharing arrangement that underpins the SI Agreement.



## THE SOUTH AFRICAN SUGAR INDUSTRY

- 88 The South African sugar industry is one of the world's leading cost competitive producers of high-quality sugar, ranking regularly in the top quartile of the approximately 120 sugar-producing countries. The sugar industry also makes a crucial contribution to the national economy, to sustainable development, and to employment, particularly in rural areas.
- 89 The sugar industry produces an average of two million tons of sugar per season, 75% of which, on average, is marketed within the Southern African Customs Union. The annual direct income generated by the sugar industry is estimated to be in excess of R18 billion.
- 90 Whilst the sugar industry accounts for only 0.84% of the South Africa's gross domestic product, its socio-economic development has a disproportionately large impact, particularly on rural areas and rural development. This is because of where the sugar industry operates. In this regard -
- 90.1 sugarcane grows in the rural regions of KwaZulu-Natal, as well as in parts of Mpumalanga. In 2019 the sugarcane growers were estimated to be farming an area in excess of 370 000 hectares in rural KwaZulu-Natal and Mpumalanga. Sugarcane comprises almost 50% of field crop gross farming income across KwaZulu-Natal and Mpumalanga, and is a strategic crop for both provinces;



- 90.2 due to the bulky nature of sugarcane and its need to be processed rapidly after harvesting to preserve its sucrose content, sugar mills are ideally situated close to the cane supply (ie sugar processing plants are established in close proximity to the sugarcane growing operations, also predominantly in rural and deep rural areas). Sugar mills result in significant socio-economic development for these areas, creating employment and access to income generating opportunities and the development of rural infrastructure, transport, and telecommunication networks; and
- 90.3 the sugarcane farms and sugar mills, in most cases, form the backbone of the nearest rural town and are major contributors to the development of secondary economic activity, services and infrastructure that otherwise would be absent.
- 91 The South African sugar industry creates approximately 85,000 direct jobs and an estimated 350,000 indirect jobs, primarily in rural and deep rural areas with scant job opportunities and limited economic activity. The employment created through the industry represents 11% of the national total agricultural workforce.
- 92 Cumulatively, approximately 1,000,000 South Africans (or 2% of the total population) depend on the sugar industry to earn a living and support their families and broader communities. For every 1,000 hectares converted for



sugarcane operations or farming, 133 permanent jobs and 210 seasonal jobs are created.

- 93 Sustaining the sugar industry, and its production levels, is thus a matter of both social and economic importance, nationally.

(i) *The structure of the industry*

- 94 The sugar industry currently comprises -

94.1 approximately 23,000 registered sugarcane growers (of which approximately 20,700 are small-scale growers and 1,125 are large scale growers); and

94.2 six milling companies, which are THL, Illovo Sugar, RCL Foods (which all own three mills), and Gledhow Sugar, Umfolozi Sugar and UCL (which own one mill each). THL, Illovo Sugar, RCL Foods and Gledhow Sugar operate as millers and refiners whilst the other two millers do not own a refinery. All refiners in the industry are also sugar millers.

- 95 All growers must belong to one or other of the two growers' associations, and the millers must all belong to SASMA. The growers' and millers' associations interact with one another through SASA Council.



## (ii) SASA

96 SASA is a juristic person established in terms of section 2 of the Sugar Act and is governed by SASA's constitution, attached as "FA10", as amended in 2018 as per the notice attached as "FA11" and in 2020 as per the notice attached as "FA12". Such amendments were adopted, after extensive engagement as between government, the millers, and growers, to facilitate the inclusion of SAFDA in SASA and in industry engagements more generally. Prior to that point, all growers were required to be members of SACGA which exclusively represented the growers' interests in industry engagements.

97 SASA operates as an industry association through which industry participants engage with one another and with government. In amplification, -

97.1 SASA is made up of SASMA (which represents millers and refiners and is referred to as the Millers' Section), and SACGA and SAFDA (which between them represent all growers and which are referred to as the Growers' Section). The Millers' and the Growers' Sections each select 18 SASA delegates, for a total of 36 delegates across the industry (clause 2 of the Constitution);

97.2 the 36 SASA delegates meet annually to appoint the SASA councillors who make up its Council;

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97.3 . the Council administers SASA's affairs. It comprises a chairperson, three vice chairpersons and 20 councillors, ten of whom are nominated by the Millers' Section and ten of whom are nominated by the Growers' Section; and

97.4 questions arising at any meeting of the Council are determined by a majority present at a quorate meeting, but such majority *must* include votes from both the Millers' and the Growers' Sections, and the votes by the Growers' Section *must* include votes by delegates appointed by each of the Growers' Associations (SACGA and SAFDA). It means that any Council determination must have the buy-in of representatives from each section of the industry.

98 SASA is thus constituted as an industry forum through which industry participants can negotiate, engage, and agree on matters relevant to the sugar industry. SASA's objects are to carry out all functions assigned to it by Council, the Sugar Act or the SI Agreement, and include to promote, foster, regulate, co-ordinate and assist with the production, storage, transport, handling, and sale of sugar industry products.

(iii) *The SI Agreement*

99 The Minister has, in terms of section 4 of the Sugar Act, and after extensive consultation and negotiation with SASA and industry stakeholders, "*determined*" the terms of the SI Agreement which provides for matters relating


to the sugar industry and which "creates rights and obligations between or among" growers, millers and refiners in the sugar industry, and SASA.

100 Although the Minister has the power to "determine" the terms of the SI Agreement under the Sugar Act, this has always been after the industry stakeholders having in fact first agreed those terms.

101 In practice, proposed changes to the SI Agreement are debated and negotiated amongst the SASMA, SACGA and SAFDA during the Sugar Act review process, and are ultimately agreed at SASA Council meetings. They are only then submitted to the Minister by SASA for his consideration, adoption, and incorporation into the SI Agreement, by way of a published amendment.

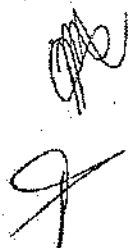
102 I am advised by Mr Howells that this process of prior agreement between SASA members has been followed in a Sugar Act and SI Agreement review process undertaken by SASA members over an extensive period concluding in 2014 (although the final amendments were not ultimately implemented by the Minister). This process was also followed in 2018 to allow for the amendments to the SI Agreement to incorporate SAFDA. Mr Howells participated in both of these negotiations as an appointed SASA Councillor whilst in the employ of Illovo Sugar.

103 The SI Agreement is thus the product of consensus among industry participants, and government, as to their rights and obligations vis-à-vis one another.



- 104 The SI Agreement governs, *inter alia*, the relationship between growers and millers, on the one hand, and between millers and millers on the other, which includes recording the terms of the revenue sharing arrangement reached among and between them.
- 105 The SI Agreement itself provides (in terms of clause 6 thereof) that it is binding on every grower, miller, and refiner in the sugar industry.
- 106 Importantly, since the terms of the SI Agreement are a product of extensive negotiation between SASA members, when registering with SASA, millers and growers cannot expect to receive the benefits agreed between members without being willing to accept the consequences that may flow, which include, (but are not limited to) the risk that if a SASA member enters business rescue, the BRPs of that member are entitled to suspend agreements in terms of section 136(2)(a) of the Companies Act.

(iv) *The need for industry protection*

- 107 As stated above, South Africa is one of approximately 120 sugar-producing countries worldwide (many of which maintain domestic subsidies or tariffs to protect their sugar production). Together, those countries produce an estimated 180 million tons of sugar annually, with global exports totalling 50 million tons per annum. The world's largest sugar producing countries –
- 



- Brazil, India, EU, China, USA, Thailand, Russian Federation, Mexico, Pakistan, Australia – account for 70% of global output (as calculated in 2021).
- 108 The global sugar industry is massive. Sugar is one of the top ten most traded commodities worldwide.
- 109 Most of the sugar produced around the world is consumed domestically but there is a worldwide oversupply of sugar, such that sugar is almost always sold at a loss on the export market by almost all countries that produce it. That makes the export market a dumping market. In the parlance of international trade, dumping means the introduction of goods into the commerce of a country or its common customs area at an import price less than the normal value of those goods.
- 110 South Africa is vulnerable to sugar dumping by international producers. If international producers were to flood the domestic market with cheaper sugar imports, they could meet the domestic demand at a price that undercuts the price at which the South African sugar industry can viably produce sugar. The risk of dumping threatens the very sustainability of the South African sugar industry – and the economic benefits and jobs that it creates.



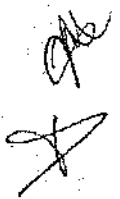
- 111 The risk of a dump market is combatted in two ways that are relevant in these proceedings -
- 111.1 government has imposed and maintained anti-dumping duties on imported sugar; and
- 111.2 the *South African sugar industry* has, with government's imprimatur, entered into a revenue sharing arrangement that seeks to maximise total domestic sugar production (thus securing jobs) and provides for domestic millers to share in the rewards of the domestic market with the risk of over-supply (and the consequent need to export).

#### THE ANTI-DUMPING TARIFFS

- 112 Under the International Trade Administration Act 71 of 2002 read with the Anti-Dumping Regulations and the Customs and Excise Act 91 of 1964, the Minister of Trade, Industry and Competition, together with the Minister of Finance, have the power (on the recommendation of the International Trade Administration Commission ("ITAC")) to impose anti-dumping duties on specified goods introduced into the commerce of South Africa.
- 113 The purpose and effect of the duty is to increase the price of the imported good in the domestic market, so as to shield domestic producers from competition imposed by the dumped product.



- 114 Anti-dumping duties usually remain in place for a period not exceeding five years – but these duties can be terminated early if circumstances are found to have changed or extended if their removal is likely to lead to a continuation or recurrence of injurious dumping.
- 115 In the case of sugar, anti-dumping duties have been imposed continuously since 2000, except for a brief period from 28 July 2017 to 15 September 2017. That hiatus confirmed the clear need for anti-dumping tariffs. During that short period its estimated that in the region of 530,000 tons of sugar were imported, with the result that the South African sugar industry had to export 795,434 tons of sugar in that financial year, at a considerable loss of a several thousand Rand per ton of sugar produced.
- 116 The effect of the anti-dumping duty is that any sugar products imported into South Africa are sold at the price determined by their distributor, plus the amount of the duty. The duty serves to inflate the price of imported product, in the hope of promoting a preference for domestic product in the local market.
- 117 The concomitant effect of the duty, however, is to constrain the price at which domestic sugar products can be sold. Sugar sold domestically must logically be priced below the price (including the tariff) of the imported product. Consumers will otherwise simply switch to the imported product.
- 118 In practice, then, millers are unable to sell sugar into the domestic market at a greater price than the price of imported sugar, and they make a loss if they



export sugar (since the export market is a dumping market). These price considerations act as very real and ongoing constraints on the millers' production capacity and on their profitability. But if the millers were to reduce their production to only supply the domestic market or limit exposure to export markets, that would have a materially adverse financial impact across the entire industry, all sugarcane growers, and millers alike – and the hundreds of thousands of people it supports.

#### THE REVENUE SHARING ARRANGEMENT

119 Because of the economic importance of the domestic sugar market (particularly in the two provinces where sugarcane farms and mills are located) and the difficulties it has faced, the sugar industry has, through SASA and with the imprimatur of government, agreed a protectionist regime, which seeks to maximise local sugar production, protect, and sustain the South African sugar industry.

120 Central to the operation of the revenue sharing arrangement is the overarching principle that the growers, the millers, and the refiners should benefit from an equitable division of the proceeds of the domestic market and be equally insulated against the risk of the export market.

*gms*  
*[Signature]*

121 The revenue sharing arrangement rests upon three practices (in addition to government's imposition of anti-dumping tariffs), namely -

121.1 **the pooling and sharing of notional total proceeds:** the total notional proceeds of the sale of sugar products across all markets (that is, the domestic market, the export market, and the molasses market), are calculated by SASA, and attributed to the growers and the millers at an agreed apportionment ratio of approximately 36% for millers and 64% for growers, and between the millers according to their sugar production levels. This is referred to in the industry as the division of proceeds;

121.2 **the provision of a minimum cane price payable by all millers to the sugarcane growers that supply them.** The minimum sugarcane price is set monthly, based on the recoverable value ("RV") of the cane sold (that is, the notional value of the sugar that will be recovered by a miller from the sugarcane delivered by an individual grower). The provision of a minimum cane price ensures that growers are protected and have certainty. In practice, millers and growers often enter into supply agreements that provide for growers to be paid an actual supply price above the minimum sugarcane price; and

121.3 **the clearing of surplus sugar production through Sasexcor:** the maximisation of production means that (in a typical season that has not been devastated by a climatic event such as large drought) the mills produce more sugar than is required to meet local demand, and the

surplus must then be exported on the residual export market. On average, of the approximately 2 million tons of sugar produced annually, 1,5 million tons are sold domestically, and 500,000 tons are exported. Millers deliver all excess raw sugar monthly to the export terminals (located at the Durban and Maputo harbours), and Sasexcor is responsible for its export as a single desk export seller. Through this arrangement, millers are guaranteed access to the export market and a market for their unsold production.

122 Each of these elements interact to maintain protection of the sugar industry.

123 The key terms of this revenue sharing arrangement are recorded in the SI Agreement (as supplemented by the Main Principles document, attached as "FA13" and ad hoc agreements reached between SASA and industry members from time to time, ratified through SASA Council). But the essence of the arrangement is that it is negotiated between and agreed among the industry participants and operates consensually, as I have described above.

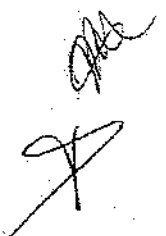
124 The arrangement must be consensual since the revenue sharing arrangement is governed by an exemption from the provisions of the Competition Act 89 of 1998 ("Competition Act"), granted by the Minister under section 10(3)(b)(iv) of the Competition Act after designating the sugar industry a designated industry. A copy of the most recent exemption is attached as "FA14". Section 10(3)(b)(iv) of the Competition Act permits the Minister to permit collusive agreements and arrangements that would otherwise be prohibited if -



*"the agreement or practice concerned, or category of agreements or practices concerned, contributes to . . . the economic development, growth, transformation or stability of any industry designated by the Minister, after consulting the Minister responsible for that industry".*

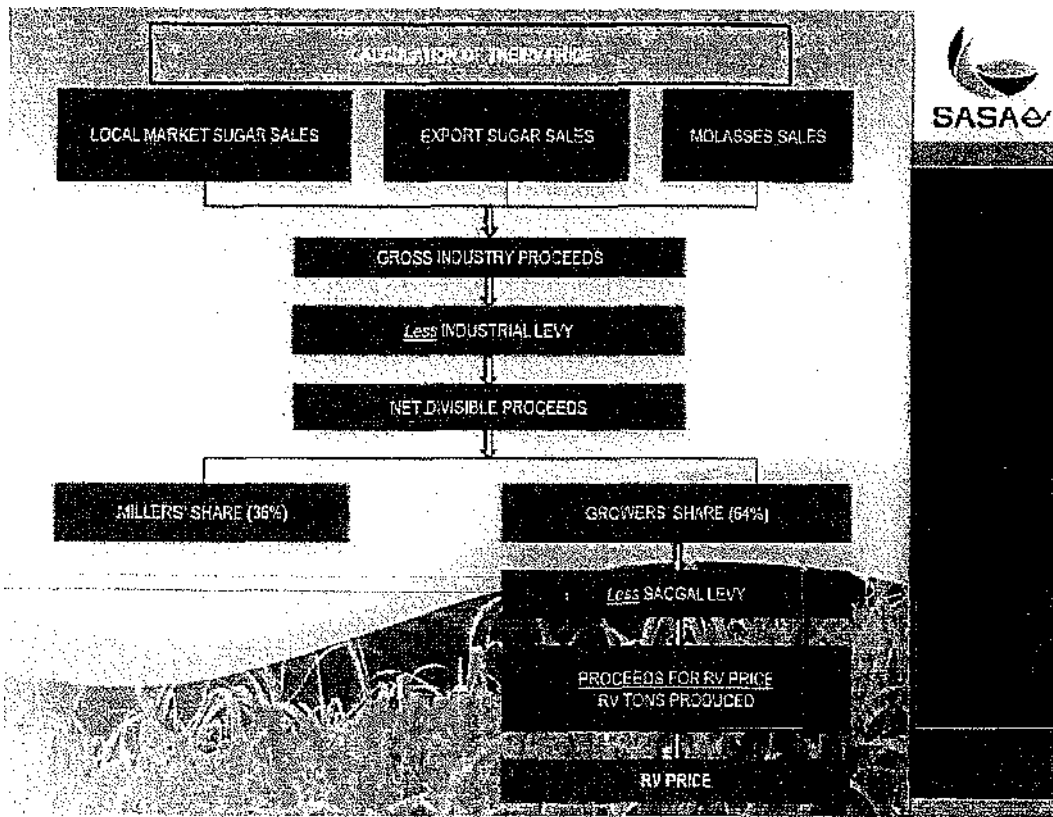
125 The exemption is only required because the revenue sharing arrangement is underpinned by agreements and arrangements among and between competing millers and growers.

126 I turn now to describe each element of the revenue sharing arrangement as referred to in paragraph 121 in more detail.



(i) The net divisible proceeds

127 The revenue sharing model and the calculation of the RV price is captured in the flow chart below which was supplied to THL by SASA -



*[Handwritten signature]*



(ii) *The gross industry proceeds*

128 The starting point is to calculate the gross industry proceeds, which, in terms of clause 164 of the SI Agreement, comprise the total of -

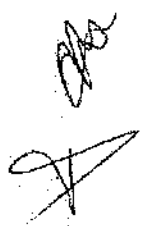
128.1 the local market sugar sales (calculated at the notional local market prices of white refined and brown sugar);

128.2 the export sugar sales (calculated at the weighted average export price that SASA achieves from its wholly owned subsidiary, Sasexcor, over the year); and

128.3 molasses sales (calculated at the notional local market price).

129 The notional local market price is a price set from time to time by the SASA Council, on the recommendation of the financial planning committee, in terms of clause 161 of the SI Agreement, for each of white refined sugar and brown sugar. SASA Council also sets the notional local market price of molasses.

130 The notional local market prices are set below the import parity price, and take into account the world price of sugar, the tariff protection price, the Rand/Dollar exchange rate, and the price that the local market can tolerate.



- 131 Millers generally sell into the domestic market above the notional local market price for each product in order to recover the costs of serving the market and to generate a profit margin.
- 132 The total gross proceeds of those three markets, added together, gives the gross industry proceeds (that is, the total gross amount to be divided between the millers and growers before the deduction of industrial levies).

(iii) *Industrial levies*

133 In terms of clause 165 of the SI Agreement, the industry obligations are deducted from the gross industry proceeds amount, to ascertain the net divisible proceeds.

134 The industrial levies are calculated and charged in terms of clauses 175, 176, 190 and 191 of the SI Agreement. They comprise all the costs that SASA incurs to fulfil any obligation incurred by it in accordance with the SASA constitution, being -

134.1 the industry obligations, which include, *inter alia* -

134.1.1 the sugar markets and logistics costs (in respect of national and export markets and management of the international export terminal);



- 134.1.2 the South African Research Institute costs;
- 134.1.3 the BBBEE industry interventions (pursuant to the industry's commitment to spend R1 billion on transformation over a 5-year period); and
- 134.1.4 the sugar cane value chain master plan costs.
- 134.2 sugar rebates (paid to any customer who purchases sugar domestically and sells within the SACU market or exports it); and
- 134.3 cane testing fees, payable in terms of clauses 157 and 158 of the SI Agreement.

*(iii) The net divisible proceeds*

- 135 The gross industry proceeds, less the industrial levies, gives the net divisible proceeds. This is the notional income generated by the industry through the sale of all sugar products across all markets, less the costs that SASA incurs to fulfil any obligation incurred by it in accordance with the SASA constitution, including inter alia, administering the revenue sharing arrangement.
- 136 The net divisible proceeds are split into two notional pools and attributed to the millers and the growers, respectively. The miller: grower ratio is stipulated in clause 166 of the SI Agreement but derives from an agreement between the



millers and growers, reached in around 2000, based on the relative costs of sugar milling and refining, and cane growing at the relevant point in time. It has been adjusted subsequently on a few occasions through negotiation between millers and growers but has remained broadly the same over time. Currently it is 64.3127% in favour the growers and 35.6873% in favour of the millers.

*(iv) The minimum cane price (chapter 6 of the SI Agreement)*

137 To calculate the minimum cane price, grower-specific levies owing to SACGA and SAFDA are deducted off the 64.3127% proportion of the net divisible proceeds attributed to the growers. The growers' statutory levies are set in terms of clause 162 of the SI Agreement.

138 By agreement, SACGA and SAFDA charge equal statutory costs to their members. The Growers' Statutory Costs are intended to cover those associations' operating costs. Since SACGA and SAFDA operate for and represent the growers, their fees come predominantly out of the growers' share of the net divisible proceeds.

139 The growers' share, less the association levies, gives the total notional proceeds for the volume of RV from the cane produced. In terms of clause 170 of the SI Agreement, it is then divided by the number of tons of RV produced by all growers, to give the RV price of cane per ton.



140 The RV price is the minimum price that a miller may pay to a grower that supplies it, and it must pay the grower monthly. In practice, millers often pay growers more than the RV price per ton for cane, in terms of supply contracts, the terms of which are negotiated and agreed, in each instance, between them.

(v) *Redistribution and export (chapter 7 of the SI Agreement)*

141 In terms of the agreement, the millers share the 36.6873% of the net divisible proceeds allocated to them, according to their proportion of the total volume of sugar produced to the total volume of sugar produced.

142 For each year, SASA calculates the total tonnage of product sold across all three markets (domestic, export sugar, and molasses). Each miller will then have an equal share (quota) of each of these three markets (clause 183 of the SI Agreement).

143 If the miller has outperformed its quota for a particular product (ie white refined or brown sugar) in the domestic market, then it must pay SASA quarterly to the extent of its over-performance in the market (based on the notional price attributed to that particular market). SASA "redistributes" an equivalent amount to the total paid in by all over-performing mills, to under-performing millers in respect of that product and market, in proportion to their quotas, in terms of clause 183(e) of the SI Agreement. In terms of clause 183(h) of the SI Agreement, SASA must pay the redistribution amount owing to the under-

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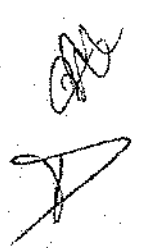
performing mills even if it has not yet been paid by (one or more of) the over-performing millers.

144 With the objective being to maximise sugar production, there will inevitably be an oversupply of the sugar produced each year (except as previously stated in years of extreme climatic events such as large drought), which is in excess of the demand of the domestic market. This additional supply is exported by Sasexcor (at a loss), and Sasexcor pay the export proceeds (calculated at the weighted average price achieved over the year) over to each mill, according to its quota allocation. The millers have the same quota for the domestic and export markets, and are paid export proceeds by Sasexcor in proportion to that quota.

145 In THL's case, it sells all the sugar that it produces on the domestic market and does not export any raw sugar. It thus permits itself to be exposed to the loss-making export market when there is no operational requirement arising from its own activities that requires it to do so. It is entitled to receive its export proceeds from Sasexcor as and when they fall due.

(vi) *Application to an over-performing (selling) miller*

146 The mechanism is best illustrated by example. The calculation set out below is undertaken for each miller in respect of each product and market, quarterly, based on estimates of the year to date. In the final quarter – that is, by the end



of March each year – SASA calculates the actual amounts owing based on total production for the year and issues a final invoice for the actual amount.

147 If, hypothetically, in respect of the white refined sugar market in a financial year –

147.1 an over-selling miller produced approximately 20% of the total domestic sugar product, it would be allocated a quota of 20% for each of the white refined domestic sugar market, the brown domestic sugar market, the molasses market, and the export sugar market;

147.2 if that miller were in fact to sell 35% of the white refined sugar sold domestically, it would have oversold its quota by 15%, and would be liable to pay SASA a redistribution amount in respect thereof;

147.3 to calculate the redistribution amount payable to SASA in respect of white refined sugar, the oversell volume (15%) is multiplied by the redistribution net price; and

147.4 the redistribution net price is the notional local market refined white sugar price, less the SASA levies (which are already accounted for in the net distribution proceeds calculation), less a manufacturing allowance.

148 The same calculation is made, *mutatis mutandis*, in respect of brown sugar.



- 149 An over-performer in the domestic market will inevitably have under-sold its quota on the export market (since the volume sold on the export market is a function of how much sugar is not sold on the domestic market). It means that where a redistribution payment is owing to SASA by an overperforming mill, there will also be export proceeds owing by Sasexcor to that mill.

#### THE DISPUTE BETWEEN THE APPLICANTS AND SASA

- 150 When THL first went into business rescue, its affairs were effectively frozen whilst the BRPs familiarised ourselves with the business and its affairs. Consequently, no payments have been made to SASA in respect of any of the obligations under the SI Agreement since the end of September 2022.
- 151 The BRPs have continued to pay the growers that supply THL monthly, in accordance with their cane supply agreements. The payments made to growers have been paid following THL having entered into business rescue because such payments are absolutely fundamental to THL's ability to continue to trade in business rescue. Amongst other things, if THL were to not pay its growers for sugarcane, THL would have no raw materials to mill, and would have no product to sell to generate revenue. Such payments should in no way be construed as a concession by the BRPs that the obligation to do so cannot be suspended in terms of section 136(2)(a) of the Companies Act.
- 152 Shortly after the BRPs appointment, and on 2 November 2022, the BRPs had our first meeting with SASA. The purpose of that meeting was to introduce





ourselves to SASA and to advise them of the business rescue process and status.

- 153 Following that initial meeting, on 8 November 2022, SASA delivered a letter in which it recorded its concern about THL being placed in business rescue, given that the sugar industry is -

*"...finely balanced [and] a collapse of THS would, in addition to the catastrophic social and economic consequences, have further far-reaching implications and a domino effect on other industry players and reverberate throughout the whole value chain".*

- 154 SASA pledged its support and for the purpose of the development of a sustainable business rescue plan, informed us that it had created a Task Team to engage and collaborate with us, and invited us to attend the Task Team meetings and co-operate with them. A copy of this letter is annexed as "FA15".

- 155 The applicants are keenly aware that there are knock-on consequences where THL does not make payment of obligations that arise under the SI Agreement that fall due in business rescue. That is inevitable in any *inter partes* arrangement of this kind.

156 But THL simply does not have the means to pay those obligations as they arise.

*In this regard -*

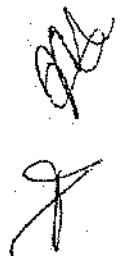
156.1 the purpose of sections 133 and 136 of the Companies Act are aimed specifically at situations such as this. They create a payment moratorium and permit the BRPs to suspend obligations where there are little to no means to fulfil obligations. Section 136(2), in particular, provides business rescue practitioners the opportunity to disengage the company, whether temporarily or permanently, from onerous contractual obligations that may prevent the company from being rescued;

156.2 THL has continued to pay the growers the amounts owing to them monthly under their supply agreements for the reasons set out above;

156.3 THL has secured Post Commencement Financing from the IDC in terms of a revolving credit facility granted on 23 December 2022 and subsequently extended on 31 March 2023. The purpose of this financing is restricted to THL having sufficient funds to continue to trade whilst it remains in business. For obvious reasons, THL was required to put up security, in the form of a cession over THL's debtors and inventories. The collection of the debtors is applied to reduce the amount owing to the IDC and a subsequent redraw occurs. As a result, there is no alternative cash available to honour any payments owing to SASA; and



- 156.4 THL's other lenders have taken security in various forms over THL's remaining assets for indebtedness under various facilities executed prior to the commencement of business rescue proceedings.
- 157 THL's financial position is thus finely balanced with no surplus cash available despite the suspension of the SI Agreement obligations.
- 158 On 13 January 2023, the BRPs again met with SASA and cautioned it that THL was unlikely to be in a position to pay its redistribution payments, and the associated interest and levies, that would become due around 31 March 2023.
- 159 On 23 January 2023, SASA addressed the letter, attached as "FA16", to us (and to Mr Howells). In that letter, SASA set out its view that the redistribution payments and levies (and the interest thereon) that would become due on about 31 March 2023 under clause 183 of the SI Agreement could not be suspended, and that SASA was entitled, under section 133(1)(f) of the Companies Act, to bring proceedings to enforce payment. SASA also acknowledged that there were export proceeds due and payable to THL in the amounts of R777,473,235, and R225,643,688, but said that these payment would be withheld until such time that THL settled its Local Market Redistribution payments. (The applicants do not accept that the export proceeds, which Sasexcor owes to THL, can lawfully be withheld. They are due and payable. We reserve our rights to pursue payment thereof, should that become necessary.)



160 On 23 February 2023, SASA sent a letter of demand for R176,237,638.89, comprising industry levies that it claimed had become due under clauses 158 (the cane testing levies), 162 (the growers' statutory levies), and 193 to 194 of the SI Agreement (the industry obligations). They are the industry levies described in paragraph 134 above which are deducted off the gross industry proceeds, to calculate the net divisible proceeds. SASA purported to reserve its right to bring proceedings to compel payment thereof. I submit that SASA does not, in fact, have such right. A copy of that letter is attached as "FA17".

161 In response, the BRPs sent the letter of 24 February 2023 (referred to in paragraph 22 above). In it, we confirmed our view that the payment obligations under the SI Agreement were capable of suspension and that we had in fact suspended them. We also recorded our intention to defend any action undertaken by SASA to enforce payment thereof. As appears from what is set out above, SASA has not brought such proceedings.

162 Thereafter, the BRPs met with SASA on 20 March 2023 to discuss and to attempt to resolve our respective positions. We were unable to do so.

163 On 23 March 2023, SASA sent a further letter reiterating its view that the obligations under the SI Agreement were incapable of being suspended, and also recording that it intended to impose a levy on THL, or its successor in title, of an amount equal to the unpaid industry obligations that accumulate during business rescue. A copy of that letter is attached as "FA18".



164 SASA is not permitted to do so because it has already included THL's unpaid amounts in the industry obligation levies charged in respect of the April to June 2023 quarter, and has recovered payment from the other millers on that basis. It cannot recover the same amount twice. I invite SASA to confirm their position in this regard.

165 The amounts claimed by SASA were subject to adjustment as at 31 March 2023 to account for final production volumes and the notional attributed to them. The outstanding amounts have been reconciled as between SASA and the BRPs.

166 Accordingly, as at the time of deposing to this affidavit -

166.1 an amount of R1,4 billion is currently outstanding to SASA in respect of (a) levies and (b) redistribution payments, and the interest and levies ancillary thereto;

166.2 of that, an amount of R420,600,000 was owing at the commencement of business rescue proceedings, and an amount R1,002 billion has accrued since commencement of business rescue proceedings. It is the payment of the amount of R1,002 billion that has been suspended by the BRPs; and

166.3 an amount of R629,751,000 is owing by Sasexcor to THL in respect of export proceeds.



167 The applicants' position is that THL's obligation to pay that outstanding amount that became due during business rescue has been suspended in terms of section 136(2)(a) of the Companies Act, and that SASA is in any event precluded from seeking to enforce payment of any amount in terms of section 133 of the Companies Act. The total debt owing to SASA will be dealt with in the business rescue plan.

### DECLARATORY RELIEF

168 I understand that this Honourable Court has the power, under section 21(1)(c) of the Superior Courts Act 10 of 2013, to determine any existing, future, or contingent right or obligation, and to grant declaratory relief in respect thereof. It will exercise that discretion only in appropriate cases.

169 I submit that this is an appropriate case for the grant of declaratory relief. In amplification -

169.1 there is clearly a dispute between SASA and the applicants as to whether (a) the BRPs have the power and the right, under section 136(2)(a) of the Companies Act, to suspend payment obligations arising under the SI Agreement that became due during business rescue and (b) whether SASA is precluded or permitted to bring court proceedings to enforce payment of outstanding amounts, under

section 133 of the Companies Act. THL and SASA have an interest in those disputes, which affect existing and future rights; and

169.2 it is also in the interests of justice that such disputes are determined by this Honourable Court. The questions of whether the payment obligations (or at least the redistribution payment obligations) arising under the SI Agreement can be suspended, and/or whether SASA can compel their payment during the business rescue, are of considerable importance to THL, SASA and the sugar industry as a whole, so too the public and consumers;

169.3 from the applicants' point of view, the outcome of those disputes will determine the payments that must be made during the business rescue which, in turn, will have an impact on the prospect of THL being rescued, and potentially the content of its proposed business rescue plan; and

169.4 for SASA, it will have a bearing on the funding available to SASA in the short term, and on its rights under the proposed business rescue plan. Both THL's rescue, and SASA's funding, have serious implications for the sugar industry.

170 I accordingly submit that the declaratory relief is properly sought, and warrants determination by this Honourable Court.



171 The proper interpretation of sections 136(2)(a) and 133 of the Companies Act – and their relationship to the SI Agreement – is a matter for legal argument, which is appropriately addressed at the hearing of the matter. For present purposes, I merely note that the language, purpose, and context of section 136(2)(a) and section 133 of the Companies Act, on the one hand, and of the SI Agreement, on the other, all support an interpretation that permits the suspension of the payment obligations imposed by the SI Agreement and precludes SASA from bringing proceedings to enforce payment during business rescue.

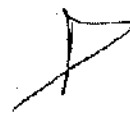
#### THE CONSTITUTIONAL CHALLENGE (SOUGHT IN THE ALTERNATIVE)

172 If this Honourable Court determines (contrary to what I have submitted above) that the SI Agreement is a price regulation regime imposed by the Minister and/or SASA that does not qualify as an agreement under section 136(2)(a) of the Companies Act, then the applicants submit that section 136(2)(a)(i) of the Companies Act is under-inclusive and consequently irrational and unconstitutional.

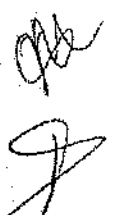
173 As I have set out above, one of the key features of the business rescue regime is to create a moratorium on claims against the company and its property, to afford the business rescue practitioners the time and space to restructure and rescue the company at issue.



- 174 On SASA's interpretation of section 136(2)(a) of the Companies Act, payment obligations that are owed under a regulatory regime and to a regulatory authority – even for onward payment to another industry participant – are not capable of suspension. That would include all the obligations that arise under the SI Agreement, but also charges due to other organs of state (including, for example charges due to a municipality in respect of the provision of municipal services).
- 175 It is irrational and arbitrary to permit creditors to claim immediate payment of a debt owing to them merely because those creditors are organs of State. Doing so subverts the purpose and operation of the purpose of business rescue and the protective environment it creates by excluding certain debts from its remit – but without a concomitant purpose underpinning that exclusion. There is no obvious reason why organs of state (in contrast to employees, for example) should be exempted from Chapter 6 and the protective environment it creates.
- 176 On the contrary, organs of State (including regulators) will often be better able to weather the consequences of a delay in or non-payment than an ordinary creditor. Where the regulatory charges represent a substantial proportion of the debt that the company is unable to pay (as in the present case), their exclusion from the moratorium means that section 136(2)(a) of the Companies Act is unable to achieve the object for which it was enacted – that is, to protect the company, whether temporarily or permanently, from onerous contractual obligations that may prevent the company from being rescued.



177. Moreover, if regulatory charges are indeed excluded from the ambit of section 136(2)(a) of the Companies Act and regulators are permitted to claim their immediate payment, the regulators are afforded a preference over all other creditors (post-commencement employees and post-commencement financiers per section 135 of the Companies Act) where that is not provided for in the Companies Act and would not be the case in liquidation. In the present context, it would serve to give primacy to the terms of the SI Agreement over the provisions of the Companies Act (in breach of section 5(4) of the latter).
178. In addition, permitting this creditor to claim immediate payment of a debt owing to them would be contrary to the preferences of creditors created by section 135 of the Companies Act insofar as Post Commencement Financing is concerned.
179. Finally, this is contrary to the balancing of the rights of all the relevant stakeholders in a business rescue. Allowing the State or a regulatory authority, as a creditor to be paid in such circumstances would be tantamount to a preference and will not achieve the careful act of balancing the rights and interests of all parties. Such conduct will be prejudicial to a company and its stakeholders.
180. I accordingly submit that, should the above Honourable Court find that the SI Agreement is not an "agreement" as defined by the Companies Act and that it therefore falls outside the purview of section 136(2)(a)(i) of the Companies Act, then section 136(2)(a)(i) of the Companies Act is irrational,



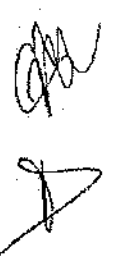
unconstitutional, and consequently invalid to the extent that it fails to provide for the suspension of charges due under a regulatory scheme.

181 It would not be just and equitable to strike out that provision in its entirety as a consequence of its under-inclusiveness. That would serve to remove a crucial and necessary mechanism within the business rescue regime from the BRPs' arsenal.

182 I respectfully submit that the constitutional defect should therefore be remedied by reading in the words "*or regulatory regime*" after the word "*agreement*" in section 136(2)(a)(i) of the Companies Act. Prayer 2.2 of Part B of the notice seeks that relief.

#### RCL FOODS' FATALLY DEFECTIVE APPLICATION

183 On 27 March 2023, the applicants' attorneys, Werksmans, received the letter attached as "FA19" from Webber Wentzel, acting on behalf of RCL Foods. The letter recorded RCL Foods' view that THL's obligation to pay SASA the industry levies and redistribution payments due under the SI Agreement were not capable of being suspended because the SI Agreement "*is statutorily binding*" and asked us to confirm whether we had indeed (purported) to suspend those



obligations under section 136(2) of the Companies Act. It stated, in paragraph 4 that -

*"Should we not hear anything to the contrary from you, the BRPs, by close of business tomorrow, we shall assume that this is indeed the BRPs' position, and a dispute will have arisen between our client and the BRPs relating to obligations arising out of the Industry Agreement and/or the interpretation of the Industry Agreement. We are instructed to refer such a dispute, on a priority basis, to the Sugar Industry Appeals Tribunal ("the Tribunal") for determination."*

184 Werksmans responded on 28 March 2023, with the letter attached as "FA20".

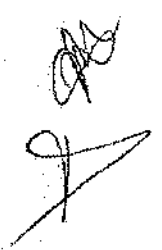
It confirmed that the BRPs had suspended the obligation to pay the levy and redistribution payments due under the SI Agreement and recorded that THL simply did not have the means to make those payments.

185 On 29 March 2023, Webber Wentzel forwarded that letter to SASA under cover of a letter pertinently recording that -

*"[I]n light of the response, which confirms, unequivocally, that the BRPs have purported to suspend THL's levy and redistribution obligations during the business rescue proceedings in terms of section 136(2) of the Companies Act, 2008, it is our instruction to proceed, without delay, to refer a dispute, on a priority basis, to the Sugar Industry Appeals Tribunal ("the Tribunal") for determination on or before 31 March 2023". It asked SASA to "support RCL's impending legal proceedings before the Tribunal".*

186 A copy of that letter is annexed as "FA21".

187 On 30 March 2023, Werksmans wrote a letter recording that they had sought and anticipated receiving approval for an extension of the publication of the THL



business rescue plan and sought clarity from Webber Wentzel on the timing of its anticipated Sugar Industry Appeals Tribunal application. That letter is "FA22" hereto.

188 Also on 30 March 2023, RCL Foods referred the matter to the Sugar Industry Appeals Tribunal, in which it sought an order declaring that -

188.1 the payment obligations of millers to SASA and SASA's redistribution obligations in respect of millers, constitute legally binding and enforceable statutory obligations;

188.2 no miller is entitled to suspend its payment obligations unilaterally; and

188.3 SASA is statutorily obligated as regulator of the sugar industry to enforce the payment obligations of millers.

189 RCL Foods also sought to have that matter heard on a priority basis. Its statement of claim and application for priority (both without annexures) is attached as "FA23". On 3 April 2023, Illovo Sugar recorded, through its attorneys, that it intended to intervene as a co-complainant in the RCL Foods' application. A copy of that letter is "FA24".

190 RCL's application falls outside the Tribunal's jurisdiction, both because the dispute to which it relates turns on the proper interpretation of the Companies Act, not the Sugar Act, and because it is a dispute that arises between the



BRPs, in their capacity as such, and SASA, and not between members of the sugar industry.

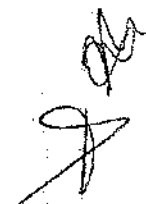
191 The applicants reserve the right to raise these jurisdictional attacks before the Tribunal in due course, should that prove necessary. Werksmans informed RCL Foods' application of the flaws in its application, and of our intention to bring the present application for declaratory relief in the High Court, in their letter of 4 April 2023 (attached as "FA25").

192 Similar recordals were made to Illovo Sugar in the letter attached as "FA26", and to SASA in the letter attached as "FA27".

193 On 5 April 2023, RCL Foods tendered a stay of RCL Foods' application, on certain conditions set out in paragraph 6 of the letter attached as "FA28". The applicants refused to accede to those conditions but undertook to prepare this application as expeditiously as possible and to endeavour to file it during the week of 20 April 2023. Werksmans' letters to that effect are "FA29" and "FA30" respectively.

194 On 20 April 2023, Webber Wentzel (on behalf of RCL Foods) addressed a letter to the Tribunal, in which RCL Foods recorded its agreement to stay RCL Foods' application, provided the applicants launched this application by Friday, 21 April 2023. A copy of this letter is attached marked "FA31".

- 195 The applicant's response to Webber Wentzel's letter in paragraph 194 above is attached marked "FA32", and I pray it be read as if specifically incorporated herein.
- 196 As matters stand, RCL Foods' application has been stayed by agreement to allow this application to proceed. Its outcome will render RCL Foods' application moot.
- 197 RCL Foods' application is in fact wholly incompetent and ought never to have been brought – let alone proceeded with. The applicants should not have been put to the time and cost of dealing with it at all. That is because -
- 197.1 although fashioned to raise a dispute against SASA, it, in truth, seeks declaratory relief in respect of THL, and the BRPs' decision to suspend THL's payment obligations under the SI Agreement (as is clear from the correspondence described in paragraphs 183 and 185 above); and
- 197.2 it is brought in breach of section 133 of the Companies Act which precludes legal proceedings being brought in any forum against a company in business rescue. RCL Foods has neither obtained the requisite consent from the BRPs, nor procured permission from the court to bring proceedings against THL in business rescue.



198 The applicants accordingly seek an order from this Court, in paragraphs 4 and 5 of the notice of motion, striking out or permanently staying RCL Food's *application and directing RCL Foods to pay our costs in relation thereto.*

#### SUBSTITUTED SERVICE

199 As a preliminary step in this application, the applicants seek leave to serve on the following respondents by way of substituted service -

199.1 all the registered growers who participate in the sugar industry; and

199.2 the affected persons (as this term is defined in section 128 of the Companies Act) in THL's business rescue.

200 In each case, the respondents are simply too numerous and dispersed to serve individually and personally. These papers run to several hundreds of pages, and it would cost hundreds of thousands of Rand to print hard copies, and to pay sheriff's charges, for physical service on the tens of thousands of persons at issue – even assuming that we could find physical addresses for them all.

201 I submit that it would be appropriate for an order of substituted service to be granted, to ensure proper service on those respondents. They have a direct and material interest in the relief sought in these proceedings.





202 In Part A of the notice of motion, the applicants accordingly seek an order for substituted service by -

202.1 directing SACGA and SAFDA to email a copy of the notice of motion and founding affidavit to all the growers registered with them, and for whom they have email address on file;

202.2 directing the BRPs to email a copy of the notice of motion and founding papers to all affected persons registered for whom they have email addresses on file;

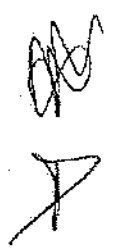
202.3 directing THL and SASA to place a link to the full founding papers on their respective websites; and

202.4 directing the BRPs to cause notice of the application, in the form of Annexure NOM1 to the notice of motion, to be published in the following newspapers -

202.4.1 *Business Day*, in English;

202.4.2 the *Natal Mercury* in English and isiZulu; and

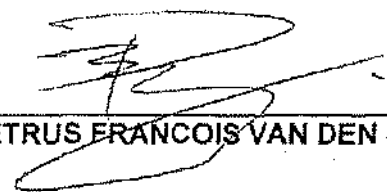
202.4.3 the *Mpumalanga News*, in English, isiZulu and siSwati.



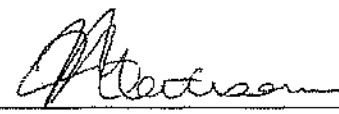
203 I submit that these mechanisms are adequate to bring the application to the attention of all respondents.

204 The notice of motion is crafted to ensure that the time periods for filing notice of intention to oppose by the registered growers and the affected persons (that is, for the thirteenth and further respondents) will only run from the date on which the steps above are completed. They will consequently have a proper opportunity to participate in Part B of the application, should they wish to do so.

WHEREFORE, the applicants pray for the relief sought in the notice of motion to which this affidavit is attached.

  
\_\_\_\_\_  
PETRUS FRANCOIS VAN DEN STEEN

I certify that this affidavit was signed and sworn to before me at Werksmans Chambers on this the 26<sup>TH</sup> day of April 2023 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

  
\_\_\_\_\_  
COMMISSIONER OF OATHS  
Name:  
Address: NICOLE MATISONN  
Capacity: Commissioner of Oaths  
Practising Attorney RSA (Cape)  
1st Floor Hill House  
43 Somerset Rd, Green Point, 8051



**"FA1"**

IN THE HIGH COURT OF SOUTH AFRICA  
 KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: \_\_\_\_\_

In the matter between:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)	Second Applicant
TREVOR JOHN MURGATROYD N.O.	Third Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Applicant
GERHARD CONRAD ALBERTYN N.O.	Fifth Applicant
and	
SOUTH AFRICAN SUGAR ASSOCIATION	First Respondent
S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fourth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Fifth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Sixth Respondent
RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED	Seventh Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED	Eighth Respondent
UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED	Ninth Respondent

GLEDHOW SUGAR COMPANY (PROPRIETARY) LIMITED	Tenth Respondent
HARRY SIDNEY SPAIN N.O	Eleventh Respondent
UCL COMPANY (PROPRIETARY) LIMITED (PROPRIETARY) LIMITED	Twelfth Respondent
ALL REGISTERED GROWERS	Thirteenth to Twenty-Three Thousandth Respondents
THE AFFECTED PERSONS IN THL'S BUSINESS RESCUE	Twenty-Three Thousand and First Respondents and Further Respondents

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**TREVOR JOHN MURGATROYD**

do hereby make oath and say –

- 1 I am an adult male director of Metis Strategic Advisors (Proprietary) Limited. I am the third applicant in my capacity as the duly appointed joint business rescue practitioner of Tongaat Hulett Limited, the first applicant in this application.
- 2 The facts contained in this affidavit are within my own personal knowledge and are both true and correct.
- 3 I confirm that I have read the Founding Affidavit deposed to by PETRUS FRANCOIS VAN DEN STEEN and confirm that the facts contained therein are,

*Handwritten signature and initials*

insofar as they may relate to me, within my personal knowledge and are, to the best of my belief, both true and correct.

TREVOR JOHN MURGATROYD

I certify that this affidavit was signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of April 2023 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS

Name:  
Address:  
Capacity:



**"FA2"**

IN THE HIGH COURT OF SOUTH AFRICA  
 KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: \_\_\_\_\_

In the matter between:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)	Second Applicant
TREVOR JOHN MURGATROYD N.O.	Third Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Applicant
GERHARD CONRAD ALBERTYN N.O.	Fifth Applicant
and	
SOUTH AFRICAN SUGAR ASSOCIATION	First Respondent
S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fourth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Fifth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Sixth Respondent
RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED	Seventh Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED	Eighth Respondent
UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED	Ninth Respondent
GLEDHOW SUGAR COMPANY	



(PROPRIETARY) LIMITED	Tenth Respondent
HARRY SIDNEY SPAIN N.O	Eleventh Respondent
UCL COMPANY (PROPRIETARY) LIMITED (PROPRIETARY) LIMITED	Twelfth Respondent
ALL REGISTERED GROWERS	Thirteenth to Twenty-Three Thousandth Respondents
THE AFFECTED PERSONS IN THL'S BUSINESS RESCUE	Twenty-Three Thousand and First Respondents and Further Respondents

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**CONFIRMATORY AFFIDAVIT**

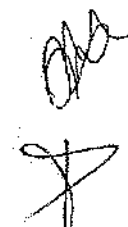
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I, the undersigned,

**GERHARD CONRAD ALBERTYN**

do hereby make oath and say –

- 1 I am an adult male director of Metis Strategic Advisors (Proprietary) Limited. I am the fifth applicant in my capacity as the duly appointed joint business rescue practitioner of Tongaat Hulett Limited, the first applicant in this application.
- 2 The facts contained in this affidavit are within my own personal knowledge and are both true and correct.
- 3 I confirm that I have read the Founding Affidavit deposed to by PETRUS FRANCOIS VAN DEN STEEN and confirm that the facts contained therein are,



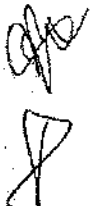
insofar as they may relate to me, within my personal knowledge and are, to the best of my belief, both true and correct.

GERHARD CONRAD ALBERTYN

I certify that this affidavit was signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of April 2023 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS

Name:  
Address:  
Capacity:





**"FA3"**

IN THE HIGH COURT OF SOUTH AFRICA  
 KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: \_\_\_\_\_

## In the matter between:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)	Second Applicant
TREVOR JOHN MURGATROYD N.O.	Third Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Applicant
GERHARD CONRAD ALBERTYN N.O.	Fifth Applicant
and	
SOUTH AFRICAN SUGAR ASSOCIATION	First Respondent
S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fourth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Fifth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Sixth Respondent
RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED	Seventh Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED	Eighth Respondent
UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED	Ninth Respondent
GLEDHOW SUGAR COMPANY	

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(PROPRIETARY) LIMITED	Tenth Respondent
HARRY SIDNEY SPAIN N.O	Eleventh Respondent
UCL COMPANY (PROPRIETARY) LIMITED (PROPRIETARY) LIMITED	Twelfth Respondent
ALL REGISTERED GROWERS	Thirteenth to Twenty-Three Thousandth Respondents
THE AFFECTED PERSONS IN THL'S BUSINESS RESCUE	Twenty-Three Thousand and First Respondents and Further Respondents

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**DAVID EVAN HOWELLS**

do hereby make oath and say –

- 1 I am an adult male employed by Tongaat Hulett Limited (in business rescue) (the first applicant in this application) as the Managing Director of Tongaat Hulett Sugar South Africa (Proprietary) Limited, the second applicant in this application.
- 2 The facts contained in this affidavit are within my own personal knowledge and are both true and correct.
- 3 I confirm that I have read the Founding Affidavit deposed to by PETRUS FRANCOIS VAN DEN STEEN and confirm that the facts contained therein are,

Handwritten signature and initials in the bottom right corner of the page.

insofar as they may relate to me, within my personal knowledge and are, to the best of my belief, both true and correct.

DAVID EVAN HOWELLS

I certify that this affidavit was signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of April 2023 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS

Name:  
Address:  
Capacity:





THL Board Resolution

**TONGAAT HULETT LIMITED**

(Registration No. 1892/000610/06)

(the "Company")

---

**WRITTEN RESOLUTIONS OF THE BOARD OF DIRECTORS PASSED IN TERMS OF SECTION 74  
OF THE COMPANIES ACT, 2008**

---

**Resolution: THB035/2022**

We, the persons whose names appear below and who have signed this document or other documents in the same form, being the directors of the Company, hereby adopt by written consent, given in person or by electronic communication, the following resolutions in terms of section 74 of the Companies Act, 2008 (the "Companies Act") and they shall be as valid and effective as if they have been passed at a meeting of the directors duly convened, constituted and held.

**IT IS RECORDED THAT -**

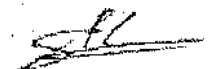
- 1 A quorum was present for the meeting in person and/or *via* electronic communication, and that all time periods for the convening of this board meeting as required in terms of article 7.4.6 of the MOI, as read with Section 73 of the Companies Act ("the Companies Act") and otherwise are hereby waived and/or condoned, to the extent necessary, given the urgency of the agenda items.
- 2 After careful consideration, the directors adopted the resolutions below in accordance with the provisions of the MOI and the Companies Act.

**IT IS RESOLVED THAT -**

- 1 The Company, being financially distressed within the meaning of section 128(f) of the Companies Act, and with the belief that there is a reasonable prospect that Company may be rescued within the meaning of section 128(b)(iii) of the Companies Act, voluntarily commences with business rescue proceedings immediately and that it be placed under the supervision of a business rescue practitioner in terms of Section 129(1) of the Companies Act;

THL Board Resolution

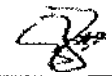
- 2 the Company and/or its attorneys, namely Werksmans Attorneys, forthwith lodge the requisite documents for the commencement of business rescue proceedings with the Companies and Intellectual Property Commission of South Africa and any documents ancillary thereto and/or necessary for the commencement and/or continuation of business rescue proceedings;
- 3 Trevor John Murgatroyd, Identity Number: 6211115087089 ("Murgatroyd"), Petrus Francois van den Steen, Identity Number: 6811075024087 ("van den Steen") and Gerhard Conrad Albertyn, Identity Number: 8309195128084 ("Albertyn"), of Metis Strategic Advisors Proprietary Limited, each of Murgatroyd and van den Steen being senior turnaround specialists, and Albertyn being an experienced turnaround specialist, be appointed as the Company's joint business rescue practitioners in terms of section 129(3)(b) of the Act; and
- 4 John Gavin Hudson, in his capacity as director of the Company, be and is hereby authorised to do all things necessary, or to procure the doing of all things necessary, and to sign any and all documents, or to procure the signing of any and all documents, as is necessary to give effect to the resolutions aforesaid on behalf of the board of directors of the Company, including deposing and signing the sworn statement contemplated in Section 129(3)(a) of the Companies Act;
- 5 any director of the Company who was present at the meeting of the board when the resolutions listed above were debated and passed may sign these resolutions in counterparts and, despite the fact that the names of all directors of the Company appear below, these resolutions need only be signed by members of the board of directors of the Company who are sufficient in number to constitute a quorum and validly consider and resolve on all matters discussed and agreed during the meeting.

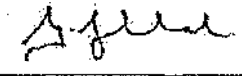
  
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 GAVIN HUDSON 26/10/2022 17:16

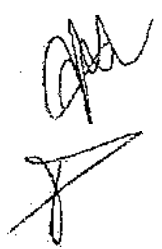
  
 \_\_\_\_\_  
 DAN MAROKANE 26/10/2022 16:42

  
 \_\_\_\_\_  
 ROBIN GOETZSCHE 26/10/2022 16:28

  
 \_\_\_\_\_  
 ROB AITKEN 26/10/2022 16:38

  
 \_\_\_\_\_  
 DAVID NOKO 26/10/2022 17:10

  
 \_\_\_\_\_  
 GRAHAM CLARK 26/10/2022 15:33





THL Board Resolution

*Andile Sangqu*

**ANDILE SANGQU** 26/10/2022 17:18

*Louisa Stephens*

**LOUISA STEPHENS** 26/10/2022 16:00

*P*

**PIERS MARSDEN** 26/10/2022 16:06

3

6

*[Handwritten signature]*

COR 123.1

**"FA5"**

Companies and Intellectual  
Property Commission  
a member of the Sars Group

## COMPANIES AND INTELLECTUAL PROPERTY COMMISSION REPUBLIC OF SOUTH AFRICA

Date: 27/10/2022  
 Customer name: NASTASCHA HARDUTH  
 Customer code: NASTA9  
 E-mail address: NHARDUTH@WERKSMANS.COM  
 Rereference Number: 60000190293

The Commission has received a form CoR123.1 Notice to Commence Business Rescue Proceedings in terms of section 129 or court order commencing business rescue proceedings in terms of section 131 of the Companies Act, 71 of 2008, dated 27/10/2022 for:

Company / Close Corporation Name: TONGAAT HULETT LTD  
 Registration Number: 1892/000610/06  
 Company / Close Corporation Status: BUSINESS RESCUE

The application was duly registered on 27/10/2022 and the effective date of commencement of business rescue proceedings is recorded as 27/10/2022.

Yours sincerely,

Commissioner: CIPC

The Companies and Intellectual Property Commission of South Africa  
 P.O Box 429, Pretoria, 0001, Republic of South Africa  
 Docex 256, Pretoria  
 Contact centre 086 100 2472  
 www.cipc.co.za



1892/000610/06



60000190293

1 of 5

Document issued by the Commissioner of Companies And Intellectual Property Commission on Thursday, 27 October 2022 at 17:10



**Certificate of Confirmation**

Registration Number: 1892/000610/06  
Enterprise Name: TONGAAT HULETT

**ENTERPRISE INFORMATION**

Registration number: 1892/000610/06  
Enterprise Name: TONGAAT HULETT LTD  
Registration Date: 07/09/1892  
Business Start: 07/09/1892  
Enterprise Type: PUBLIC COMPANY  
Enterprise Status: BUSINESS RESCUE  
Financial Year End: MARCH

Main business/Main object: AN AGRI-PROCESSING BUSINESS WHICH INCLUDES INTEGRATED COMPONENTS OF LAND MANAGEMENT, PROPERTY DEVELOPMENT AND AGRICULTURE

Tax number: 9306101206

Addresses:	Postal Address P O BOX 3  TONGAAT Kwa-Zulu Natal 4400	Address Of Registered Office AMANZIMNYAMA HILL  TONGAAT Kwa-Zulu Natal 4400
------------	--	--

Company Records Location:



1892/000610/06



60000190293

*[Handwritten signature]*  
2 of 5





Document issued by the Commissioner of Companies And Intellectual Property Commission on Thursday, 27 October 2022 at 17:10

**Certificate of Confirmation**

Registration Number: 1892/000610/06  
Enterprise Name: TONGAAT HULETT



Registration Number: 1892/000610/06  
Enterprise Name: TONGAAT HULETT LTD

**AUDITORS**

Name

Postal Address

**ACTIVE MEMBERS / DIRECTORS**

Full Name	Director Type	ID Number	Appoint. Date	Cellphone Number	Address
MAROKANE DANIEL LESEJA	DIRECTOR	7106175369089	18/11/2019	0824010226	Postal: 4 SUNSET VILLAS, 5 VICKIE AVENUE, MORNINGSID EXT, KWA-ZULU N, 2196 Residential Address: 4 SUNSET VILLAS, 5 VICKIE AVENUE, MORNINGSID EXT, KWA-ZULU N, 2196
AITKEN ROBERT DAVID	DIRECTOR	8202255068086	01/03/2019	0832338953	Postal: 1 AMANZIMNYAMA HILL ROAD, TONGAAT, TONGAAT, KWA-ZULU N, 4399 Residential Address: 1 AMANZIMNYAMA HILL ROAD, TONGAAT, TONGAAT, KWA-ZULU N, 4399



3 of 5  
*[Handwritten signature]*

HUDSON JOHN GAVIN	DIRECTOR	7008185224082	01/02/2019	0605556770	Postal: P O BOX 98 3, GLENASHLEY, GLENASHLEY, KWA- ZULU N, 4399 Residential Address: 27 THE DUNES, BALLITO, BALLITO, KWA- ZULU N, 4399
VAN ROOYEN JOHANNES JACOBUS	COMPANY SECRETARY	7402085099084	01/01/2020		Postal: P O BOX 3, TONGAAT, NO ADRESS, NO Adress, 4400 Residential Address: NO ADRESS, NO ADRESS, NO ADRESS, NO Adress, 0000
CLARK GRAHAM JOHN	NON EXECUTIVE DIRECTOR	5508185207088	21/04/2022	0836417317	Postal: 50 HAWAAN DRIVE, HAWAAN FOREST ESTATE, UMHLANGA ROCKS, KWA-ZULU N, 4319 Residential Address: 50 HAWAAN DRIVE, HAWAAN FOREST ESTATE, UMHLANGA ROCKS, KWA-ZULU N, 4319
NEL JEAN JOHANNES	NON EXECUTIVE DIRECTOR	7204055144084	01/10/2019	0834508195	Postal: 30 VAN DER STEL STREET, MOSTERTDRIFT, STELLENBOSCH, WESTERN CA, 7600 Residential Address: 30 VAN DER STEL STREET, MOSTERTDRIFT, STELLENBOSCH, WESTERN CA, 7600
MARSDEN PIERS MICHAEL	NON EXECUTIVE DIRECTOR	7703055168084	23/06/2022	0835566751	Postal: 1 AMAZIMNYAMA HILL ROAD, TONGAAT, TONGAAT, KWA- ZULU N, 4310 Residential Address: 1 AMAZIMNYAMA HILL ROAD, TONGAAT, TONGAAT, KWA- ZULU N, 4310
NOKO DAVID COLLEN	NON EXECUTIVE DIRECTOR	5708135758087	01/07/2020	0836118101	Postal: P O BOX 752430, GARDENVIEW, GARDENVIEW, GAUTENG, 2047 Residential Address: 30 TALAMATI STREET, THE REST NATURE RESERVE, NELSPRIUT, MPUMALANGA, 1200

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STEPHENS LOUISA	NON EXECUTIVE DIRECTOR	7610220461080	15/07/2020	0836888855	Postal: P O BOX 99 78586, SANDTON, SANDTON, GAUTENG, 2146 Residential Address: 4 THE BOULEVARD, 72 STIGLINGH ROAD, RIVONIA, GAUTENG, 2191
GOETZSCHE ROBIN MICHAEL	NON EXECUTIVE DIRECTOR	6009105075084	01/10/2019	0636800426	Postal: 2 SAGEWOOD CLOSE, ZIMBALI COASTAL RESORT, BALLITO, KWA-ZULU N, 4000 Residential Address: 2 SAGEWOOD CLOSE, ZIMBALI COASTAL RESORT, BALLITO, KWA-ZULU N, 4000
SANGQU ANDILE HERSPERUS	NON EXECUTIVE DIRECTOR	6610025961087	01/10/2019	0824658920	Postal: 86 BONNIE PLACE, GLENADRIENNE, GLENADRIENNE, GAUTENG, 0060 Residential Address: 86 BONNIE PLACE, GLENADRIENNE, GLENADRIENNE, GAUTENG, 0060

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**Companies and Intellectual Property Commission  
Republic of South Africa**

**Form CoR 123.1****About this Form**

- This form is issued in terms of section 129 and 131 of the Companies Act, 2008, and Regulation 123 of the Companies Regulations, 2011.
- A company resolution to commence business rescue proceedings has no force of effect until it has been filed with this notice.
- This notice must be published to every affected person within 5 business days after:
  - (a) It has been filed, in the case of a resolution; or
  - (b) The date of the court order, in such a case.
- If this Notice is issued following a board resolution:
  - (a) The company must appoint a business rescue practitioner within 5 business days after filing this notice; and
  - (b) Any affected person may apply to a court in terms of section 130 for an order setting aside the resolution.
- The fee for filing this notice is R0.

**Contacting the Commission**

The Companies and Intellectual Property Commission of South Africa

Postal Address  
PO Box 429  
Pretoria  
0001  
Republic of South Africa  
Tel: 086 100 2472

www.cipc.co.za

**Notice of Beginning of Business Rescue Proceedings**

Date: 27 October 2022

Customer Code: WERKMP

**Concerning**

(Name and Registration Number of Company)

Name: Tongaat Hulett Limited

Registration No: 1892/000610/06

The above named company advises that business rescue proceedings have commenced in terms of Chapter 6 of the Companies Act, as a result of:

- The Board of the company having adopted the attached resolution in terms section 129, on \_\_\_\_\_.
- A Court having made the attached order in terms of section 131, on \_\_\_\_\_.

In terms of section 132 (1)(a), the company's business rescue proceedings commenced on \_\_\_\_\_, being the date on which:

- This notice was filed with the Commission.
- The court issued the attached order.

(Only in the case of a company resolution)

In support of this Notice, the company has attached a sworn statement of the relevant facts upon which the resolution was founded by a director representing the Board.

Name and Title of person signing on behalf of the Company:

John Gavin Hudson - Director - Tongaat Hulett Limited

Authorised Signature:

Companies and Intellectual Property Commission  
Republic of South Africa

Form CoR 123.2

About this Form

- This form is issued in terms of sections 129 and 131 of the Companies Act, 2008, and Regulation 123 of the Companies Regulations, 2011.
- This notice must be published to every affected person within:
  - (a) 2 business days after it has filed, if the company appointed the Practitioner; or
  - (b) 5 business days after the court order, in such a case.
- If this notice is issued following a company appointment, any affected person may apply to a court in terms of section 130 for an order setting aside the appointment, or requiring the practitioner to provide security.
- The fee for filing this Notice is R0.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address  
PO Box 429  
Pretoria  
0001  
Republic of South Africa  
Tel: 086 100 2472

www.cipc.co.za

Notice of Appointment of Business Rescue Practitioner

Date: 27 October 2022

Customer Code: WERKMP

Concerning

(Name and Registration Number of Company)

Name: Tongaat Hulett Limited

Registration No. 1892/000610/06

The above named company commenced business rescue proceedings on

The following person has been appointed as the business rescue practitioner:

Trevor John Murgatroyd & Petrus Francois van den Steen & Gerhard Conrad Albertyn

(Appointed as Joint Business Rescue Practitioners)

By the company, in terms of section 129 (3)(b).

By the court, in terms of section 131 (5).

Name and Title of person signing on behalf of the Company:

John Gavin Hudson - Director - Tongaat Hulett Limited

Authorised Signature

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**SUGAR ACT 9 OF 1978**

**SUGAR INDUSTRY AGREEMENT, 2000**

Published under General Notice 1208 in *Government Gazette* 21139 of 3 May 2000 and amended by:

GN 1082	GG 41967	20181009
GN 444	GG 43195	20200401
GN 700	GG 43466	20200523

The Minister of Trade and Industry hereby in terms of section 4(1)(c) of the Sugar Act, 1978 (Act 9 of 1978), publish in the Schedule the terms of the Sugar Industry Agreement, 2000, which the Minister has, after consultation with the South African Sugar Association, determined under section 4(1)(a) of the said Act.

**Alec Erwin**  
Minister of Trade and Industry

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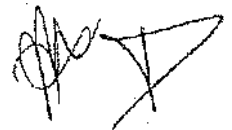
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## CHAPTER 1

### INTRODUCTION AND SCOPE OF AGREEMENT

#### 1. Definitions

In this agreement any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates-

- (i) "the Act" means the Sugar Act, 1978 (Act No. 9 of 1978);
- (ii) "Administration Board" means the Sugar Industry Administration Board referred to in clause 10;
- (iii) "Appeals Tribunal" means the Sugar Industry Appeals Tribunal referred to in clause 22;
- (iv) "Cane Testing Service" means the cane testing service referred to in clause 134;

- (v) "contracted" when used in the context of the supply of cane by growers to mills means the obligation of a grower to supply cane and the corresponding obligation of a mill to accept cane in terms of a contract between the mill and the grower concerned, including a deemed contract referred to in clause 106;
- (vi) "control area" means a geographical area from time to time delineated by the South African Sugar Association and notified to the Administration Board;
- (vi)A. "Co-operation Agreement" means a binding written agreement concluded for each season and signed by 1 April of each year by all the Local Grower Structures representing growers contracted to deliver cane to a particular mill for that season in terms of which the Local Grower Structures agree:

- (a) how they will collectively perform their functions in terms of this agreement and their collective costs for that season of performing those functions;
- (b) the amount per ton cane to be deducted from the cane proceeds payable by the mill to all growers contracted to deliver cane to that mill in terms of clause 132A to fund the Local Grower Structures' costs in terms of clause 1(v)A(b);
- (c) how the amounts recovered from growers in terms of clause 132A are to be shared between the Local Grower Structures;

[Definition of "Co-operation Agreement" inserted by GN 700/2020 w.e.f. 1 July 2020]

- (vii) "crush mill" means the home mill of a grower or, if arrangements at any time exist for the diversion of deliveries of the grower's cane to another mill, means such other mill at that time;
- (viii) "export market" includes all territories, other than the local market and "export" bears a corresponding meaning;
- (ix) "Growers' Association" means means SACGA and SAFDA;

[Definition of "Growers' Association" substituted by GN 700/2020 w.e.f. 1 July 2020].

- (x) "growers' register" means the register referred to in clause 69;
- (xi) "home mill", in relation to a grower, means the mill to which the grower is at the time bound to deliver cane under a contract, whether of a long term or short term duration;
- (xii) "industry obligations" means expenditure incurred by or at the instance or with the approval of the South African Sugar Association referred to in clause 177 and includes all expenses which in terms of this agreement are industry obligations;
- (xiii) "Local Grower Council" means the structure/s established by SACGA and SAFDA and which are hereby deemed to be authorised to represent all growers contracted to deliver cane to a particular mill,

[Definition of "Local Grower Council" substituted by GN 700/2020 w.e.f. 1 July 2020]

- (xiv) "local market" means the geographical area falling within the borders of the Republic of South Africa and the states of Swaziland, Namibia, Lesotho and Botswana;
- (xv) "Local Pest, Disease and Variety Control Committee" means a committee referred to in clause 88;
- (xvi) "member", in relation to the Administration Board or the Appeals Tribunal, includes an alternate member of that body;
- (xvii) "mill" means a particular sugar mill, and includes the miller in respect of that mill only;
- (xviii) "Millers' Association" means the South African Sugar Millers' Association NPC and its successors in title;

[Definition of "Millers' Association" substituted by GN 700/2020 w.e.f. 1 July 2020]

- (xix) "Mill Group Board" means a board referred to in clause 50;
- (xx) "Official Methods Manual" means the manual referred to in clause 135 as amended from time to time;
- (xxi) "out of season cane" means any cane for which special deliveries to a mill other than the home mill or crush mill of a grower are necessitated, at any time between the closing of the home mill or crush mill of such grower at the conclusion of its crushing season and its opening at the commencement of the ensuing season, by reason of damage by frost, fire, drought, flood, pest or disease;

- (xxii) "recoverable value" means the mass of recoverable content of cane delivered by a grower to a mill for crushing, which mass represents recoverable sugar moderated by the value of recoverable molasses of such cane, taking into account adjustments in respect of the sucrose, non-sucrose and fibre content thereof, and which mass of recoverable content shall be calculated in terms of the procedures contained in the Official Methods Manual;
- (xxiii) "SACGA" means the South African Cane Growers' Association NPC and its successors in title;  
[Definition of "SACGA" inserted by GN 700/2020 w.e.f. 1 July 2020]
- (xxiv) "SAFDA" means the South African Farmers' Development Association and its successors in title;  
[Definition of "SAFDA" inserted by GN 700/2020 w.e.f. 1 July 2020]
- (xxv) "Sasexcor" means S.A. Sugar Export Corporation (Proprietary) Limited;
- (xxvi) "season" or "crushing season", in relation to a mill, means the period, in each year, that a mill is open for the acceptance of cane delivered from growers for crushing at the mill;
- (xxvii) "sugar beet" or "beet" means, botanically, an annual root crop of the species *Beta Vulgaris*, grown specifically for the production of sucrose from the roots which constitute a raw material which may be delivered by a grower to a mill for processing;
- (xxviii) "sugar beet mill" means a mill which produces sugar exclusively from sugar beet and includes the miller in respect of that mill only;
- (xxix) "sugar cane" or "cane" means, botanically, a tall grass of the genus *Saccharum*, agriculturally, a crop produced from hybrids which are the progeny of a number of *Saccharum* species commonly referred to as cane and, specifically, the raw material which may be delivered by a grower to a mill for processing;
- (xxx) "ton" means a metric ton and "tonnage" has a corresponding meaning;
- (xxxi) "Union Co-op" means the Union Co-operative Limited;
- (xxxii) "year" means a period of twelve months commencing on the first day of April.

## 2. Date of commencement

This agreement shall be called the Sugar Industry Agreement, 2000, and shall come into operation on 1 April 2000.

## 3. Scope of Agreement

This agreement constitutes an agreement determined by the Minister in terms of section 4(1) of the Act.

4. In terms of section 4(2)(a) of the Act, sugar beet is designated as an agricultural product from which it is possible to manufacture sugar as a product which is subject to this agreement.
5. This agreement shall not apply to sugar beet growers, and only those provisions which expressly refer to sugar beet millers shall apply to sugar beet millers.
6. Subject to clause 5, this agreement shall be binding on every grower, miller and refiner.
7. If any grower had a contractual right to have cane transported to a mill by or at the expense of a mill and that right terminated on 1 April 1984 in consequence of the amendments to the Sugar Industry Agreement, 1979, which came into effect on that date, that right shall not revive notwithstanding the repeal of the Sugar Industry Agreement, 1979.
8. The Administration Board, Appeals Tribunal and each Mill Group Board established in terms of the Sugar Industry Agreement, 1994, shall, upon the coming into force of this agreement, continue in existence and be deemed to have been established in terms of this agreement and the unfinished business of each of those bodies shall be resolved by those bodies, respectively, without interruption notwithstanding the repeal of the Sugar Industry Agreement, 1994, and the coming into force of this agreement.
9. All determinations, decisions and actions lawfully made, taken or done by any person, body or authority constituted or authorised under the provisions of the Sugar Industry Agreement, 1994, hereby repealed, shall be deemed, in all cases not specifically provided for in any other provision of this agreement, to have been made, taken or done by the corresponding person, body or authority constituted or authorised under this agreement, and shall continue to be of full force and effect until repealed or amended by reason of competent action taken according to the provisions of this

agreement.

**CHAPTER 2**

**THE SUGAR INDUSTRY ADMINISTRATION BOARD, THE SUGAR INDUSTRY APPEALS TRIBUNAL AND MILL GROUP BOARDS**

**10. Sugar Industry Administration Board**

There is hereby established a board to be known as the Sugar Industry Administration Board.

**11. The Administration Board shall consist of-**

- (a) one person appointed by the South African Sugar Association;
- (b) two persons appointed by the Millers' Association; and
- (c) two persons appointed by the Growers' Associations, 1 appointed by SACGA and 1 appointed by SAFDA.

[Para. (c) substituted by GN 700/2020 w.e.f. 1 July 2020]

**12. The member appointed by the South African Sugar Association will be the chairperson of the Administration Board.**

**13. The South African Sugar Association, the Millers' Association and the Growers' Association, respectively, may appoint one or more alternate members to act in the place of each Administration Board member appointed by it. If more than one alternate for an Administration Board member is so appointed, the body appointing them shall stipulate the order in which the alternates shall assume office so that the first alternate in the stipulated order who is available to act shall assume temporary office to the exclusion of the others. Each alternate Administration Board member may act in the place of the member to whom he or she is appointed as an alternate during the absence or inability to act of such member and, while so acting, shall have all the powers and duties (including those of the chairperson in the case of the alternate appointed by the South African Sugar Association) of such a member.**

**14. Each Administration Board member shall hold office until he or she is removed from office by the body of which he or she is the appointee or he or she resigns or dies. The Sugar Association, the Millers' Association and the Growers' Association shall, respectively, at any time be entitled to remove from office any Administration Board member appointed by it and to fill a vacancy in the office of any such appointee by making a new appointment.**

**15. Functions of Administration Board**

The Administration Board shall-

- (a) exercise the powers and perform the duties conferred upon or imposed on it in terms of this agreement;
- (b) conduct the enquiries, investigations, inspections and surveys which it considers to be appropriate for the better performance of its functions in terms of this agreement;
- (c) be entitled to refer, of its own volition, any matter within its jurisdiction to the Appeals Tribunal for a directive or decision, in which case it will be bound by any such directive or decision.

**16. The Administration Board may**

- (a) appoint committees from among its members and delegate to any committee any of its functions;
- (b) appoint any person it considers fit to advise it in any matter within its jurisdiction and remunerate the person concerned; and
- (c) generally do anything incidental to the proper performance of its functions in terms of this agreement.

**17. Proceedings of Administration Board**

The Administration Board may meet for the despatch of business, adjourn or otherwise regulate its business as it deems fit and an Administration Board member may at any time request the chairperson to convene a meeting of the Administration Board and the chairperson, on receipt of such request, shall convene the requested meeting.

**18. The quorum necessary for the transaction of the business of the Administration Board shall be all five members or**

their alternates: Provided that if at any meeting a quorum is not present, the chairperson may adjourn the meeting for not less than seven but not more than 14 days and if the chairperson or acting chairperson and at least one member appointed by the Millers' Association and one member appointed by the Growers' Association are present at such an adjourned meeting, the members then present shall constitute a quorum.

19. Questions arising at an Administration Board meeting shall be decided by a majority of votes.
20. All applications and representations to the Administration Board shall be made in writing in such form as the Administration Board may determine or approve from time to time. In any application or matter before it, the Administration Board shall inform itself of the facts to be taken into account in the manner as it deems fit, including evidence on affidavit: Provided that it shall not receive oral evidence or representations or hold hearings unless, in its sole discretion, it considers that exceptional circumstances exist in any particular application or matter which require it to hear oral evidence or representations.
21. Any notification by the Administration Board of a decision, order, ruling or determination shall be deemed to have been notified to a person-
- when it is delivered to him or her personally or to his or her authorised representative; or
  - five days (excluding Saturdays, Sundays and public holidays) after it is sent to him or her by pre-paid certified or registered mail at the address appointed by him or her for the service of such notification or, failing such appointment, at his or her last known business or residential address.

## 22. Sugar Industry Appeals Tribunal

The South African Sugar Association shall establish a tribunal to be known as the Sugar Industry Appeals Tribunal.

## 23. The Appeals Tribunal shall consist of-

- three persons appointed by the South African Sugar Association;
- one person appointed by the Millers Association; and
- two persons appointed by the Growers' Associations, 1 appointed by SACGA and 1 appointed by SAFDA.

[Para. (c) substituted by GN 700/2020 w.e.f. 1 July 2020]

24. The Millers' Association and the Growers' Association, respectively, may appoint one or more alternate members to act in the place of their respective appointed members of the Appeals Tribunal in the absence or inability to act of such appointees. If either Association appoints more than one alternate, it shall stipulate the order in which appointees shall assume acting office so that the first alternate in the stipulated order who is available to act shall assume temporary office to the exclusion of the others.

25. The members of the Appeals Tribunal appointed by the South African Sugar Association shall all be persons having, in the opinion of the South African Sugar Association, no direct material pecuniary interests in the sugar industry ("the non industry members") and no member of the Administration Board shall be eligible to be a member of the Appeals

## 26. Tribunal while he or she is a member of the Administration Board.

On 31 July of each year, one of the non-industry members shall retire from office and his or her office shall be filled with effect from 1 August of that year by a new appointee. The non industry member to retire in each year will be that non industry member who will have been longest in office since his or her last appointment but, as between persons last appointed on the same day, the one to retire shall be determined by lot.

27. The South African Sugar Association shall designate one of the non-industry members as the chairperson of the Appeals Tribunal and one of the other such members as the vice-chairperson thereof.

28. Each member of the Appeals Tribunal appointed respectively by the Millers' Association and the Growers' Association shall retire from office on 31 July in each year and his or her office shall be filled with effect from 1 August of that year by a new appointee.

29. In the event of any vacancy occurring in the Appeals Tribunal otherwise than in consequence of the expiration of a member's period of office, the body having appointed the member whose office becomes vacant shall appoint a person to fill that vacancy for the unexpired portion of the period of office of the member in whose place that person is appointed. If any of the non-industry members becomes temporarily unable to act, the South African Sugar Association



shall appoint a person to act in his or her place as an acting member of the Appeals Tribunal for the duration of the member's inability to act.

30. A retiring member of the Appeals Tribunal shall be eligible for re-appointment.
31. The body appointing a member of the Appeals Tribunal may remove that member from office on the ground of the member's improper or irregular conduct or his or her incapacity to perform his or her duties properly.
32. Each member of the Appeals Tribunal shall receive such fees as may be from time to time determined by the South African Sugar Association.

### 33. Functions of Appeals Tribunal

Any person having a direct interest in a decision, order, ruling or determination of the Administration Board shall have the right to appeal to the Appeals Tribunal against the decision, order, ruling or determination. Unless in regard to the matter in question this agreement otherwise stipulates, the person shall, within 21 days of the date on which the decision, order, ruling or determination of the Administration Board is notified to him or her, lodge with the Administration Board a written notice of appeal, failing which the right to appeal shall lapse and the decision, order, ruling or determination of the Administration Board shall be final and binding. The Administration Board shall, upon receipt of a notice of appeal, send copies of the notice of appeal to each other party directly affected by the decision, order, ruling or determination against which the appeal shall have been lodged and to the Appeals Tribunal.

### 34. The Appeals Tribunal shall perform the following functions-

- (a) hear and decide any appeal where a right of appeal to the Appeals Tribunal is provided for in this agreement;
- (b) hear and decide any issue or issue any directive in regard to any matter referred to it for a decision or directive by the Administration Board or the South African Sugar Association;
- (c) hear and decide any dispute which may arise between a mill and a grower arising from a cane supply agreement or any agreement between those parties relating to the supply or delivery of cane;
- (d) undertake and resolve any matter which, in terms of this agreement, falls to be undertaken by the Administration Board if the Administration Board is unable to or fails to duly resolve the matter owing to a deadlock or for any other reason; and
- (e) hear and decide any matter which, in terms of this agreement, is to be determined by it.

35. Subject to the provisions of this agreement relating to the determination of particular disputes if any dispute arises between any persons upon whom this agreement is binding, insofar as the dispute relates to the subject matter, application, any right or obligation arising out of, or the interpretation of this agreement, or of any agreement referred to in clause 34(c) (unless such last mentioned agreement otherwise stipulates), the Appeals Tribunal shall have jurisdiction, exclusive of any court of law, to determine such dispute and any party to such dispute may submit such dispute for determination to the Appeals Tribunal.

### 36. Proceedings of Appeals Tribunal

The Appeals Tribunal may hold hearings for the despatch of its business, adjourn and otherwise regulate its hearings as it deems fit. Provided that the Appeals Tribunal shall convene at least once a quarter for the purpose of hearings. The chairperson or vice chairperson may, at any time, convene a meeting of the Appeals Tribunal for the purpose of a hearing or any other business.

37. The quorum for any hearing of the Appeals Tribunal shall be the chairperson or vice chairperson of the Appeals Tribunal and at least two other members thereof.

38. All questions coming before the Appeals Tribunal shall be decided by a majority of votes of the members of the Appeals Tribunal hearing the issue. Provided that:

- (a) the person appointed by the Millers' Association shall have 2 votes;
- (b) the persons appointed by the Growers Associations shall have 2 votes, 1 vote to be exercised by the person appointed by SACGA and 1 vote to be exercised by the person appointed by SAFDA;
- (c) the non-industry members shall have 2 votes each; and

(d) in the case of an equality of votes, the chairperson, or in his or her absence, the vice-chairperson shall have a second or casting vote.

[Clause 38 substituted by GN 700/2020 w.e.f. 1 July 2020]

39. The Appeals Tribunal may, on good cause shown, condone a late noting of an appeal.
40. Hearings of the Appeals Tribunal shall not be open to any party not directly affected by the matter before it: Provided that the chairperson or, in his or her absence, the vice chairperson may permit anyone having a sufficient interest in the matter but not directly affected thereby to be present.
41. Each party to an appeal or other matter before the Appeals Tribunal shall be entitled to be present and be represented at the hearing of the appeal or other matter.
42. The Appeals Tribunal, at any hearing-
- (a) may receive written and oral representations from any party to the matter;
  - (b) shall not be bound by the strict rules of evidence and may inform itself in relation to any matter before it in such manner as it deems fit;
  - (c) may take into account all documents, minutes and records of the Administration Board in connection with any matter for which purpose the Administration Board shall make such documents available to the Appeals Tribunal;
  - (d) may hold an inspection *in loco*;
  - (e) may adjourn for any purpose.
43. At the hearing of an appeal the Appeals Tribunal shall not be limited to consideration of the evidence before the Administration Board or other body and the Appeals Tribunal may, in its discretion, rehear the evidence or hear or receive additional evidence so as to inform itself fully of the relevant facts.
44. Subject to the provisions of clause 47, any decision, order or ruling of the Appeals Tribunal shall be final and binding on all parties.
45. The Appeals Tribunal shall have the power to confirm, alter or set aside any decision or order of the Administration Board and to make such decision or such order as it deems proper.
46. The Appeals Tribunal may make such rules and regulations not in conflict with the terms of this agreement or the common law or legislation for the conduct of its hearings as it thinks fit.
47. **Appeal Against Finding of Appeals Tribunal**

A party to a dispute decided by the Appeals Tribunal in terms of clause 34 may within 21 days of the date of the Appeals Tribunal's decision appeal to any provincial or local division of the High Court of South Africa having jurisdiction against the Appeals Tribunal's finding by lodging with the registrar of the court concerned a notice of appeal setting out in full the grounds of appeal, in which event-

- (a) the appellant shall, on the same day or before notice of appeal is so lodged, deliver to the secretary of the Appeals Tribunal a copy of the notice of appeal;
- (b) the secretary of the Appeals Tribunal shall within 30 days of the date on which the notice of appeal is delivered to him deliver to the registrar of the court concerned in triplicate-
  - (i) the record of the proceedings of the Appeals Tribunal comprising copies of all notices and documents filed on behalf of the parties to the proceedings, a copy of all documentary evidence admitted in the proceedings, a written transcript of the oral evidence and a copy of the statement of the decision and order of the Appeals Tribunal; and
  - (ii) a statement of the reasons for the Appeals Tribunal's finding;
- (c) the appellant shall on request pay to the Appeals Tribunal the reasonable cost, as determined by the Appeals Tribunal, of preparing and copying the documents referred to in paragraph (b);
- (d) the appeal shall be prosecuted as if it were an appeal from a judgment of a Magistrate's Court in a civil matter

and all rules applicable to an appeal from such a judgment shall *mutatis mutandis* apply to the appeal against the finding of the Appeals Tribunal; and

- (e) the court hearing the appeal may-
  - (i) confirm the finding of the Appeals Tribunal; or
  - (ii) set aside such finding; or
  - (iii) substitute its own finding for that of the Appeals Tribunal; and
  - (iv) make such order as to costs as it deems meet.

**48. Secretaries to Administration Board and Appeals Tribunal**

The South African Sugar Association may-

- (a) appoint an officer to exercise the powers and perform the duties of the secretary to the Administration Board;
- (b) appoint an officer to exercise the powers and perform the duties of the secretary to the Appeals Tribunal.

**49. Expenses of Administration Board and Appeals Tribunal**

All costs and expenses incurred by the Administration Board and the Appeals Tribunal in the performance of their functions in terms of this agreement shall be industry obligations.

**50. Mill Group Boards**

There shall be established for each mill, other than Union Co-op, a board to be known as a Mill Group Board comprising respective representatives of the mill and the growers concerned: Provided that-

- (a) a Mill Group Board may be established for more than one mill owned by the same miller;
- (b) Union Co-op shall perform the functions of a Mill Group Board in respect of the Union Co-op mill and the growers concerned and all the provisions of the agreement relating to Mill Group Boards, save for clause 54, shall *mutatis mutandis* apply to Union Co-op; and
- (c) the membership of each Mill Group Board in existence on the date of the coming into operation of this agreement shall be deemed to have been established in terms of this agreement.

51. At any time, the growers concerned referred to in the foregoing provision in relation to a Mill Group Board shall comprise all those growers who at that time are contracted to deliver cane to that mill, or who shall have delivered cane to that mill during the previous year unless they at that time are contracted to deliver all their cane to another mill.

**52. Functions of Mill Group Boards**

Mill Group Boards shall-

- (a) have as their principal objects the promotion of the interests of the mills and growers to which the respective Mill Group Boards relate, including the provision of services aimed at facilitating the reception and testing of cane delivered to the mills concerned;
- (b) perform their duties and exercise their powers in terms of this agreement, and advise the Administration Board on matters relating to the provisions of this agreement, as may be required from time to time; and
- (c) undertake the specific functions in relation to cane testing described in clause 53.

53. Each Mill Group Board shall, at the mill concerned, be responsible for-

- (a) the provision of all sampling and analysing facilities and equipment required for the determination of the recoverable value of cane delivered by growers to the mill for the purpose of determining-
  - (i) the total mass of recoverable value of cane entering the mill; and

- (ii) the recoverable value of individual consignments of cane entering the mill, all in accordance with the Official Methods Manual;
- (b) the determination of the total mass of recoverable value of cane entering the mill and the recoverable value of the individual consignments of cane, in accordance with the Official Methods Manual; and
- (c) keeping records of all data pertaining to its activities as required by the South African Sugar Association from time to time.
54. To enable it to discharge its functions, each Mill Group Board shall be a legal persona.
55. Each Mill Group Board shall, in respect of the mill concerned, have power to-
- (a) provide for the testing of cane in accordance with clause 53 and to decide on all aspects of cane sampling and analysis including but not limited to the frequency of cane sampling and analysis and the manner in which cane sampling and analysis shall be carried out;
- (b) enter into contracts in connection with the discharge of its obligations and without limiting the foregoing generality, if it is resolved that cane testing is to be carried out in terms of a contract with any provider of cane testing services, to engage the services of a contractor to carry out cane testing at the mill concerned and to negotiate and agree the terms of such contract, including any renewal thereof;
- (c) undertake such tasks and duties as may from time to time be assigned to it by agreement between the Local Grower Structure/s and the mill concerned;
- [Para. (c) substituted by GN 700/2020 w.e.f. 1 July 2020]
- (d) impose penalties on growers who fail, without good cause, to deliver cane to the mill concerned in terms of their cane delivery estimates;
- (e) recover the costs incurred in the discharge of its obligations from the mill and the growers concerned;
- (f) own, in its own name, any movable or immovable assets and, where appropriate, to secure registration of such assets in the name of the Mill Group Board;
- (g) dispose of any of its assets by public auction or private treaty and on such terms as it may decide;
- (h) open and operate bank accounts and to invest any funds surplus to its requirements in any registered financial institution;
- (i) borrow money, with or without security, to finance any of its objects and to pledge or mortgage any of its assets as security for any such borrowings;
- (j) delegate any of its powers to any person or organisation in such manner as it may from time to time determine;
- (k) employ such staff as may be required;
- (l) sue or to be sued in its own name;
- (m) supervise the entire cane testing process; and
- (n) undertake any other matter incidental to the proper performance of its functions.
56. A Mill Group Board shall at no time distribute any of its surplus funds, profits or gains to any person and shall at all times utilise its funds solely for the objects set out in this agreement.
57. If at any time a Mill Group Board is, for any reason whatsoever unable to discharge its obligations in terms of this agreement, the Administration Board shall be entitled, after giving written notice to the Mill Group Board of its intention to do so, to assume control of cane testing at the mill concerned. The Administration Board in so doing shall have all the powers of the Mill Group Board provided for in this agreement. Once it is satisfied that the Mill Group Board is again functional, then the Administration Board shall return control of cane testing at the mill concerned to the Mill Group Board.

#### 58. Appointment of Members of Mill Group Boards

in respect of each Mill Group Board-

- (a) the number of mill members and grower members, respectively, shall be determined by the Mill Group Board concerned on condition that the number of members representing the mill and growers, respectively, shall not be less than two each, 1 appointed by SACGA and 1 appointed by SAFDA in terms of clause 58(c) unless agreed otherwise by SACGA and SAFDA in terms of a written agreement;

[Para. (a) substituted by GN 700/2020 w.e.f. 1 July 2020]

- (b) the mill members shall be appointed by the mill concerned;
- (c) the grower members shall be appointed by the Local Grower Structure/s concerned, provided that SACGA and SAFDA's Local Grower Structure/s shall be equally represented on all Mill Group Boards except if SACGA and SAFDA agree otherwise; record such agreement in writing and both sign it;

[Para. (c) substituted by GN 700/2020 w.e.f. 1 July 2020]

- (d) for the purpose of assisting it in performing its functions the Mill Group Board may establish an advisory committee as a body subsidiary to itself; and
- (e) any dispute as to the establishment, composition or any other matter regarding the operation of any Mill Group Board, shall be determined by the Administration Board.

59. Mill Group Board members shall be appointed annually in the month of March and, if not replaced during March of the following year, shall hold office until replaced by the newly appointed members. Casual vacancies on the Mill Group Board shall be filled, or alternate members appointed, by whichever of SACGA's Local Grower Structure, SAFDA's Local Grower Structure or the mill, appointed the absent member, as the case may be.

[Clause 59 substituted by GN 700/2020 w.e.f. 1 July 2020]

60. Each Mill Group Board shall appoint its own chairperson and secretary and have power to formulate its own rules of procedure. A chairperson shall be appointed for a year at a time and, in successive years, the chairperson shall be alternately the nominee of the grower members and the nominee of the mill members.

61. All questions for decision by Mill Group Boards shall be decided by the members present at duly constituted meetings thereof and at each such meeting-

- (a) the mill members shall collectively have 1 vote, the grower members appointed by the Local Grower Structure/s shall collectively have 1 vote;

[Para. (a) substituted by GN 700/2020 w.e.f. 1 July 2020]

- (b) the mill members and grower members, respectively, shall each nominate one of their number present to exercise their respective collective vote;
- (c) the chairperson shall not have a casting vote; and
- (d) the decisions of the Mill Group Board shall be binding on the mill and on all growers who are contracted to deliver cane to that mill.

62. The Administration Board may issue guiding rules and regulations for the establishment of Mill Group Boards and the conduct of the affairs thereof.

63. If, at any time, in respect of a particular mill, a Mill Group Board does not exist or does not perform its functions, then subject to clause 57, the mill concerned shall perform the functions of the Mill Group Board in accordance with the directions of the Administration Board.

64. Save insofar as this agreement otherwise provides, any dispute between a Mill Group Board and a mill or between a Mill Group Board and a grower or between growers and a mill relating to a Mill Group Board shall be referred to the Administration Board, which shall determine the dispute and if a Mill Group Board is unable to resolve an issue before it due to a voting deadlock, the issue shall be referred to the Administration Board for determination.

65. **Mill Group Boards Responsible to Administration Board**

Mill Group Boards shall be responsible to the Administration Board and shall carry out any direction and instruction of the Administration Board in respect of the performance of their functions.

**66. Appeals Against Decisions of Mill Group Boards**

Any decision of a Mill Group Board shall be subject to an appeal to the Administration Board by any interested party, save insofar as this agreement otherwise provides.

67. Any such appeal shall be noted in writing to the Administration Board within 21 days of the date on which the decision is notified to the parties concerned, failing which the right to appeal shall lapse.

**68. Expenses of Mill Group Boards**

The ordinary expenses of Mill Group Boards and their subsidiary bodies shall be financed locally in such a manner as may be agreed upon by the growers and the mills concerned, save that in respect of the costs and expenses of cane testing, clause 157 shall apply in respect of the apportionment of such costs between growers and the mill. A Mill Group Board may impose levies to provide for such expenses and, insofar as such levies are imposed on growers, direct the relative mill to deduct the levies from cane payments which become payable by the mill to the growers concerned. The extraordinary expenses of Mill Group Boards incurred at the instance of the South African Sugar Association or the Administration Board shall be paid by the South African Sugar Association at such rates as may be determined by the South African Sugar Association from time to time.

**CHAPTER 3****PRODUCTION OF CANE****69. Growers' Register**

The Administration Board shall keep a register to be known as the growers' register in which shall be entered in respect of each grower

- (a) his or her name;
- (b) the mill to which he or she is expected to deliver cane; and
- (c) such other information as the Administration Board deems necessary.

70. The Administration Board shall keep the growers' register up-to-date and, as at 1 April in each year, shall have available at its office an up-to-date abstract thereof.

**71. Growers' Right to Deliver Cane**

A grower may deliver cane to any mill willing to accept his or her cane for crushing, if he or she shall first have lodged with the Administration Board a notice in such form as the Administration Board may from time to time determine, in which is set out-

- (a) the grower's name and address;
- (b) such other information as is reasonably required by the Administration Board, provided that if the name, address or other information notified to the Administration Board changes at any time, the grower concerned shall forthwith give to the Administration Board notice of such change in such form as the Administration Board may from time to time determine.

**72. Seed Cane**

No grower shall sell or otherwise dispose of any seed cane without the prior approval of the Local Pest, Disease and Variety Control Committee having jurisdiction over the land on which the cane is grown.

73. A Local Pest, Disease and Variety Control Committee may require a grower within its jurisdiction who intends to use his or her own cane for seed cane on his or her own land to obtain the Committee's prior approval therefor.

**74. Permanent Closing Down or Resiting of Mill**

If a mill intends to resite or close permanently, it shall give the Administration Board and its Mill Group Board at least two months prior written notice thereof and the Mill Group Board shall without delay take all reasonable steps to notify all affected growers of the intended resiting or closure and no grower shall have any claim or obligations against or to

the mill in consequence of the recurring or closure, save in respect of any contract which may subsist between the grower and the mill.

#### 75. Control of Pests and Diseases and Varieties of Cane

The provisions of this Chapter relating to the control of pests and diseases and varieties of cane are intended specifically to prevent or abate loss and damage suffered by growers and the sugar industry and shall be read and construed as supplemental, in aid and not in derogation of the Agricultural Pests Act, 1973 (Act No. 3 of 1973), or any other legislation relating to pests and diseases in plants.

76. In clauses 77 to 96, unless the context otherwise indicates-

- (a) "grower" in relation to land on which cane is growing includes a person who has title to the land or who is actually in occupation of the land or who otherwise has the right of management, care, control or use of the land; and
- (b) "proclaimed area" means a control area or part of a control area designated under clause 77.

#### Pests and Diseases and the Compulsory

#### 77. Harvesting or Destruction of Cane

If, in the opinion of the South African Sugar Association, it is expedient that remedial operations on or the harvesting or destruction of any cane infested with any pest or disease be made compulsory in any control area or part of a control area, the South African Sugar Association may by notice in the Gazette proclaim the control area or a part of a control area as an area (a "proclaimed area") in which remedial operations on or the harvesting or destruction of cane infested with the pest or disease in question shall be compulsory on all growers in respect of land situated within the proclaimed area.

- 78. The South African Sugar Association may in the notice referred to in clause 77, publish such procedures, directions or orders as it may determine for the purpose of regulating remedial operations to be carried out on or the harvesting or destruction of cane and the South African Sugar Association may from time to time and in like manner amend or withdraw any notice or suspend the operation of any notice for such period as it may deem fit or in relation to such part of the proclaimed area as it may specify.
- 79. Each grower in respect of land situated within a proclaimed area shall carry out the remedial operations or the harvesting or destruction of cane with a view to the eradication of the pest or disease in question as may be required to be complied with in terms of a notice referred to in clause 77.
- 80. If the grower fails or omits to promptly comply with, to the satisfaction of the Local Pest Disease and Variety Control Committee concerned, any procedure, direction or order published in terms of the notice, the committee may, at the expense of the grower, cause the procedure, direction or order to be carried out and the grower shall forfeit all rights to the proceeds, if any, of any cane harvested upon the land in question, which proceeds shall be payable to the South African Sugar Association.
- 81. If the proceeds referred to in clause 80, are insufficient to meet the costs incurred by the South African Sugar Association in causing any procedure, direction or order so carried out, the South African Sugar Association shall be entitled to claim the shortfall from the grower and a certificate by the South African Sugar Association's auditor as to the amount so due shall be prima facie proof of the amount.

#### 82. Varieties of Cane

On or before 31 March in each year the South African Sugar Association shall cause to be published a notice in the Gazette which shall specify in respect of each control area or respective parts of each control area the varieties of cane approved by the South African Sugar Association for planting and such notice shall come into force on 1 April following the date of publication and shall remain in force until the following 31 March.

- 83. No grower shall at any time plant cane other than a variety of cane at that time approved by the South African Sugar Association for planting in the relevant control area or part thereof in which the grower's land is situated, in terms of the South African Sugar Association's said notice then in force.
- 84. A grower who plants land to an approved variety of cane shall, in the event of the approval being withdrawn in respect of the control area or part of a control area concerned, but subject to a right of appeal to the Administration Board, eradicate the cane within the period and in the manner determined by the relative Local Pest, Disease and Variety Control Committee and laid down in a written order duly served on him or her.

85. Save during the period determined by the Local Pest, Disease and Variety Control Committee for the eradication of a previously approved variety of cane, no grower shall deliver to a mill and no mill shall knowingly accept delivery from a grower of a variety of cane which is not, in the year of delivery, an approved variety for planting in the control area or part of the control area in which the grower's land is situated.
86. Any cane which is not a variety duly approved for planting in the control area concerned or part thereof and any cane which is growing on a grower's land after the expiration of the period determined for the eradication thereof in terms of an order referred to in clause 84, shall be deemed to be diseased sugar cane to which the provisions of clauses 79, 80 and 81 shall *mutatis mutandis* apply.

#### 87. Compensation for Eradication of Cane

The South African Sugar Association may in its discretion and having due regard to equitable considerations compensate a grower for loss suffered due to the eradication of his or her cane before the time it would normally be ploughed out, if the South African Sugar Association is satisfied that-

- (a) the grower has become obliged to eradicate the cane due to the pest and disease control provisions or control of varieties provisions of this agreement; and
- (b) the loss has occurred due to circumstances beyond the control of the grower:

Provided that if a grower feels aggrieved at any decision of the South African Sugar Association in the exercise of the discretion, he or she shall have the right to appeal against that decision to the Appeals Tribunal, whose decision shall be final and binding on the grower and the South African Sugar Association.

#### 88. Local Pest, Disease and Variety Control Committees and Officers

The South African Sugar Association-

- (a) shall establish, cause the appointment of committee members of and make rules by which to regulate the procedures to be followed by respective Local Pest, Disease and Variety Control Committees and Local Pest, Disease and Variety Control Officers (hereinafter referred to as officers) for respective control areas or parts of control areas and shall determine the area of jurisdiction of each committee and officer and shall provide for the identification of and the written authority to be produced by all officers so appointed;
- (b) may delegate any of its functions in terms of clauses 77 to 96 to a Local Pest, Disease and Variety Control Committee; and
- (c) shall have the power to impose levies in accordance with the recommendations of a Local Pest, Disease and Variety Control Committee on particular mills and particular growers to fund the costs and expenses of such committee and shall have the power to require the relative mills to deduct any levies imposed on growers from payments due to growers for cane deliveries.

#### 89. Powers of Officers to Enter Upon Lands

Each grower in respect of land situated in a control area shall permit an officer on production by such officer of his or her written authority to enter upon the grower's land in order to perform any of his or her functions or those of a Local Pest, Disease and Variety Control Committee or any order or instruction given to him or her by the South African Sugar Association.

#### 90. Inspection of Land and Order to Eradicate Pests or Diseases

Without incurring any obligation to pay compensation, a Local Pest, Disease and Variety Control Committee may cause an officer to inspect any cane on any land situated within its area of jurisdiction and to remove samples of any cane in order to ascertain whether any pest or disease inimical to cane exists on the land.

91. If an officer discovers upon any land within a proclaimed area the presence of any such pest or disease, or reasonably suspects the presence thereof on the land, the Local Pest, Disease and Variety Control Committee concerned may-

- (a) by order in writing duly served on the grower concerned declare the whole of the land or any specified portion thereof to be quarantined for such period or periods as may be determined by the Local Pest, Disease and Variety Control Committee concerned and specified in the order;



- (w) by order in writing duly served on the grower require the grower to carry out in the manner and within the period specified in the order such measures as the Local Pest, Disease and Variety Control Committee concerned may specify for the eradicating or combating the pest or disease; and
- (c) by order in writing duly served on the grower require the grower to carry out any remedial operation on or to harvest or destroy any cane growing on his or her land in the manner and within the period specified in the order and to keep his or her land or any portion thereof free of any such sugar cane for a period specified in the order.

92. Any order issued under clause 91 shall be subject to an appeal to the Administration Board.
93. Should a grower upon whom an order under clause 91 has been duly served fail or omit to duly observe or comply with the terms and requirements of the order, the South African Sugar Association may cause the order to be carried out in accordance with the provisions of clause 80.
94. The Administration Board shall have power to consider and decide any matter in respect of which any Local Pest, Disease and Variety Control Committee is unable, due to a disagreement among its members, to come to a decision.
95. Any appeal to the said Administration Board shall be noted in writing and delivered at the office of the South African Sugar Association within 14 days of the service upon the grower concerned of the order against which the appeal is noted.

#### 96. Service of Notice or Order

Any order in terms of the provisions of clauses 84 or 91 shall be deemed to have been duly served on the grower concerned-

- (a) if it is delivered to the grower personally;
- (b) if it is delivered to his or her duly authorised representative;
- (c) five days, excluding Saturdays, Sundays and public holidays, after it is sent by certified or registered post to the last known business or residential address of the grower; or
- (d) if it is delivered at the land concerned, in the absence therefrom of the grower, to a person apparently in charge thereof.

### CHAPTER 4

#### SUPPLY OF CANE

#### 97. Cane Delivery Estimates

Each Mill Group Board shall, after consultation with the growers and mill concerned, and subject to the provisions of this agreement, from time to time make rules for the taking out of cane delivery estimates by growers who are contracted to supply cane to the mill, and for the better performance of its functions.

98. A grower shall, whenever so requested by his Mill Group Board, submit an estimate of the cane which he or she proposes to deliver to the relative mill during the crushing season in each year and all such estimates shall be made in good faith and the grower shall, with due regard to a mill's obligation to accept deliveries of cane, use his or her best endeavours to compile his or her cane delivery estimates with reasonable accuracy.
99. Reductions or increases in a grower's cane delivery estimates shall be permitted only in accordance with the rules determined by his or her Mill Group Board in accordance with the provisions of clause 97.
100. By not later than 30 September in each year, or such earlier date as is agreed upon by the Mill Group Board and the mill concerned, or such later date as may, with the approval of the South African Sugar Association, be so agreed, each grower contracted to deliver cane to the relative mill shall be required to submit to the Mill Group Board a cane delivery estimate relative to the current season, which shall constitute an undertaking by the grower to deliver the mass of cane indicated in the estimate and after that date the grower may only increase or reduce his or her undertaking, on good cause shown, to the extent permitted by the relative Mill Group Board and the mill concerned. The words "good cause" in this clause shall be construed as including agronomic and such other factors and circumstances as may be considered appropriate.
101. If the Mill Group Board and the mill concerned cannot agree on a date other than 30 September, either party may refer

the matter to the Administration Board for adjudication.

102. It shall be the duty of each Mill Group Board to take out at regular intervals and in accordance with its rules, estimates of cane which the growers concerned propose to deliver during the crushing season and to advise the Administration Board, the growers and the mill concerned of the estimates. Mills shall not be liable for incorrect estimates made by Mill Group Boards.

103. Mill Group Boards may determine any question relating to growers' estimates of production not specifically provided for in this agreement.

#### 104. Cane Supply Agreements

A mill and a grower may enter into a contract (commonly called a "cane supply agreement") in terms of which-

- (a) such grower will be obliged to grow cane on such grower's land;
- (b) for a period, such grower will be obliged to deliver such cane to such mill and such mill will be obliged to accept such deliveries; and
- (c) the mill and the grower concerned agree to ancillary contractual terms which are not in conflict with the terms of this agreement.

105. Cane supply agreements in existence when this agreement comes into operation, shall be suspended during the subsistence of this agreement insofar as they are in conflict with the provisions of this agreement, but otherwise they shall remain in force: Provided that references in any such existing cane supply agreement to sucrose or sucrose in cane shall be construed as references to recoverable value.

106. If a grower who is not contracted to deliver cane to the relevant mill, submits a cane delivery estimate to a Mill Group Board and such estimate is included, in whole or in part, in the Mill Group Board's delivery allocations for the year concerned, such grower and the mill concerned shall be deemed to have entered into a contract for the supply of that mass of cane referred to in such grower's initial estimate to the extent included in such delivery allocations, as it may be amended from time to time, for the year concerned. If a group estimate by several such growers is submitted and included in the delivery allocations, each of those several growers shall be deemed to have so entered into such a contract with the mill concerned in relation to his or her respective share of the group estimate.

#### 107. Deliveries to Mills

Each grower shall-

- (a) deliver his or her cane to his or her crush mill;
- (b) ensure that all the cane is delivered in such a condition that the mill concerned will be able to crush the cane efficiently, to which end, without derogating from the generality of the foregoing, each grower shall ensure that the cane is reasonably topped and either trashed or burnt.

108. Save insofar as may be otherwise agreed between a particular grower and his or her home mill and subject to any provision in this agreement to the contrary, each grower shall bear his or her own costs of transport of cane to the home mill concerned.

#### 109. Times and Modes of Delivery

Each Mill Group Board shall be responsible, according to the terms of this agreement, for regulating all matters relative to the delivery time and mode of delivery applicable to each grower delivering cane to the mill concerned. The expression "delivery time" embraces the days of a week and the hours of a day during which a grower is required to deliver cane to a mill and the expression "mode of delivery" embraces the method by which cane is to be bundled, including the size of bundles, or not bundled and the type of delivery vehicle employed, so determining the manner in which the cane is presented for off-loading at a mill's receiving facilities.

110. If, to suit the receiving facilities of a mill, the mill tranships or moves cane from one mode of delivery to another, the costs of transport from the transhipment point to the mill or the cost of moving the cane to the other mode of delivery shall be borne by the mill, save insofar as the parties may otherwise agree.

111. If a mill undertakes the haulage of a grower's cane by locomotive from railhead to mill, the costs of the haulage shall be borne by the mill, save insofar as the parties may otherwise agree.

112. Save insofar as this agreement otherwise provides, each grower shall deliver his or her cane to the mill concerned at the same delivery time and by the same mode of delivery he or she was entitled to employ immediately prior to the coming into force of this agreement.
113. If a mill or a grower wishes to effect a change in the grower's time of delivery or the mode of delivery to the mill concerned-
- (a) the proposal for the change shall be referred to the Mill Group Board concerned;
  - (b) the Mill Group Board concerned shall not effect the change unless-
    - (i) in the case of the delivery time, the grower concerned consents thereto and, if the proposed change will affect the rate at which cane in any particular mode is received by the mill concerned from other growers contracted to that mill, the mill consents thereto;
    - (ii) in the case of the grower's mode of delivery, except if the proposed change results from a change in such mill's receiving facilities effected pursuant to clause 115, both the mill and the grower consent thereto; and if any dispute arises as to whether a delivery time or mode of delivery may be duly changed in accordance with the provisions of paragraphs (a) and (b), no change shall be given effect to until such time as the right to appeal has lapsed or such time thereafter as any appeal duly noted to the Administration Board or further appeal to the Appeals Tribunal shall have been finally disposed of.
114. A mill may refuse to accept the delivery of cane by a grower who persistently fails to comply with his allocated delivery time or mode of delivery.

#### 115. Mill Receiving Facilities

A mill shall not effect a change to its cane receiving facilities if the effect of the change is to render unsuitable the mode of delivery employed by any of the growers contracted to deliver cane to the mill, except with the approval of all affected growers or the Local Grower Structure/s concerned.

[Clause 115 substituted by GN 700/2020 w.e.f. 1 July 2020]

#### 116. Varieties of Cane

Each grower shall, as far as possible, deliver different varieties of cane in separate consignments, each identified by variety in the relevant delivery note. Each mill shall weigh consignments separately and keep a proper record thereof. The Mill Group Board concerned shall, as far as practicable, test the different varieties of cane separately for all elements required so as to arrive at the recoverable value. The Mill Group Board shall collate such data for industrial purposes.

#### 117. Condition of Cane

Unless the terms of any contract between the relative mill and relative grower provide otherwise, if a mill is dissatisfied with the condition of cane delivered to it by a grower and does not wish to accept such cane, it shall refer the matter to the Mill Group Board concerned. If, in any such matter referred to it by a mill, the Mill Group Board concerned is satisfied that the condition of the cane is so defective that the mill concerned cannot efficiently crush the same, the Mill Group Board concerned shall order the cane to be redelivered to the grower concerned at the grower's expense, regardless of whether or not it has been weighed, in which event the grower shall not receive any payment therefor. A Mill Group Board may delegate any of its functions in terms of this clause to a nominee.

#### 118. Road Maintenance

Where, from 1 April 1984 until immediately before the date on which this agreement comes into operation, a mill has continued to be responsible for making available and maintaining a road over which a grower delivers cane to a mill, the mill shall, to the extent it continues to be legally entitled to do so and unless otherwise agreed between the mill and the grower, continue to make the road available to the grower and continue to maintain the same on the same basis as hitherto on condition that-

- (a) if any authority assumes the obligation to maintain the road or provides a suitable alternative road, the mill's obligation shall cease;
- (b) subject to any contractual rights the mill may have, the mill shall not charge the grower or his or her transport contractor for the use of the road; and

- (c) the provisions of this clause shall not apply if the mill makes available or maintains the relevant road pursuant to a contractual obligation, which obligation shall not be deemed to be extended by the provisions of paragraph (b).

#### 119. Rateable Deliveries

Total deliveries of cane shall be made by a grower to the relative mill rateably over the full length of the crushing season, unless otherwise agreed to by the mill and the Mill Group Board concerned.

#### 120. Each Mill Group Board shall, in consultation with the mill concerned-

- (a) determine rateable delivery allocations based on growers' delivery estimates in respect of all growers contracted to deliver cane to the mill concerned;
- (b) endeavour to facilitate co-operation amongst groups of growers to arrange for the sharing by the groups concerned of delivery allocations as may be appropriate in the interests of a rateable delivery schedule and the convenience of the parties concerned; and
- (c) advise growers and the mill concerned on all questions relating to delivery allocations and the rateable delivery of cane.

#### 121. Special Delivery Allocations

A Mill Group Board may make special delivery allocations to growers at any time to secure the reasonably prompt delivery of cane damaged by frost, fire, drought, flood, pest or disease, or cane required to be harvested in terms of an order issued in terms of this agreement by a Local Pest, Disease and Variety Control Committee.

#### 122. Supply of Information to Mill Group Boards

Each mill and grower contracted to a mill shall supply to the Mill Group Board concerned all information reasonably necessary for the Mill Group Board concerned to perform its functions in terms of this agreement.

#### 123. Each such grower shall supply to the Mill Group Board concerned, by 30 April of each year or such later date as the Administration Board may allow, the following information regarding-

- (a) the area of his or her land reaped and tonnage of cane harvested therefrom in the previous year;
- (b) the estimated area of his or her land to be reaped and tonnage of cane capable of being harvested therefrom in the current year;
- (c) the estimated area of his or her land-
  - (i) under cane cultivation as at the previous 31 March;
  - (ii) to be planted to cane during the current year; and
  - (iii) which will be under cane cultivation on the following 31 March; and
- (d) such additional information as the Administration Board may reasonably require.

#### 124. Failure by a Grower to Submit Estimates or Information

A Mill Group Board may withhold, or itself determine, a cane delivery allocation to a grower contracted to the mill concerned and who-

- (a) fails to duly submit estimates as required by this agreement the accuracy of which is acceptable to the Mill Group Board of the cane he or she proposes to deliver to the mill concerned; or
- (b) fails timeously and adequately to furnish all the information and returns which he or she is required to furnish in terms of this agreement.

#### 125. A Mill Group Board may, if the relative mill or any relative grower fails to carry out its or his or her obligations to furnish any information required of it or him or her, make estimates of the required information.

Mills may at any time divert supplies of cane from one mill to another.

127. Where mills agree to make diversions of supplies of cane in terms of this agreement, the identification of and payments for all cane deliveries shall be a matter for agreement between the mills concerned on condition that details thereof shall be notified to the Administration Board from time to time.

128. Save insofar as may be otherwise agreed by the grower and the home mill concerned-

- (a) any additional costs of cane delivery or of cane testing incurred in consequence of a diversion of cane from a grower's home mill to another mill to suit the convenience of mills, shall be borne by the grower's home mill;
- (b) where the diversion results in a saving of costs of delivery, the saving shall be for the benefit of the grower concerned
- (c) where a diversion takes place mainly to suit the grower concerned, any additional costs of cane delivery or of cane testing shall be borne by the grower; and
- (d) any dispute between the grower and the home mill concerned in relation to the provisions of sub-paragraphs (a), (b) and (c) and any claim arising therefrom which is not resolved by negotiation between the parties, must be referred to the Administration Board which will have jurisdiction to determine that dispute. The expression "costs of cane delivery" in this clause means the costs incurred in the loading, handling, transportation and unloading of cane from the time it is first loaded on a vehicle to the time it is off-loaded at the receiving facilities of the mill concerned.

129. Each mill shall notify its Mill Group Board and the South African Sugar Association monthly of the estimates of cane diversions agreed between any of them in terms of this agreement.

### 130. Local Grower Structure/s

If there is more than 1 Local Grower Structure representing growers contracted to deliver cane to a particular mill, then an agreement in terms of clause 130A may only be concluded and deductions in terms of clause 132A may only be made from cane proceeds, if and when those Local Grower Structures conclude a Co-operation Agreement.

[Clause 130 inserted by GN 700/2020 w.e.f. 1 July 2020]

### 130A. Local Grower Councils

After conclusion of a Co-operation Agreement, where applicable, the Local Grower Structure/s may negotiate with a mill on behalf of all the growers contracted to deliver cane to such mill in relation to-

[Words preceding para. (a) substituted by GN 700/2020 w.e.f. 1 July 2020]

- (a) any agreement the mill may wish to enter into in relation to the length of its milling season;
- (b) the payment of compensation by the growers concerned to the mill concerned or by the mill concerned to the growers concerned if the milling season is extended beyond the agreed length thereof;
- (c) cane quality schemes and by-product payment schemes which may be offered to the growers concerned generally;
- (d) the liability of a grower concerned for damages or a penalty if such grower fails, without good cause, to deliver cane to such mill in accordance with such grower's cane delivery estimate;
- (e) any other matter relative to cane deliveries or cane supply which is of general application to all the growers concerned; and
- (f) the continuing application of any specific provision of any cane supply or similar agreement subsisting between the mill concerned and a grower at the time this agreement comes into force and that may otherwise fall away or be superseded according to clause 131.

[Clause 130 renumbered as clause 130A by GN 700/2020 w.e.f. 1 July 2020]

131. Any agreement resulting from such negotiation shall be binding on the mill concerned and all growers concerned. Any such agreement shall be supplementary to the provisions of any cane supply or similar agreement that may subsist.

such cane supply or similar agreement and any agreement concluded in terms of clause 130, the provisions of the latter agreement shall prevail, save as may otherwise be agreed in terms of clause 130(f). Any agreement concluded in terms of clause 130A, including agreements concluded by the Local Grower Councils which preceded the Local Grower Structure/s (and for clarity, the Local Grower Council was previously defined in this agreement as the Local Grower Council referred to in SACGA's Memorandum of Incorporation "representing growers contracted to deliver cane to a particular mill"), remains binding until it is replaced by another agreement concluded in terms of clause 130A.

[Clause 131 substituted by GN 700/2020 w.e.f. 1 July 2020]

**132.** If any dispute arises between a mill and a grower in relation to an agreement negotiated between the mill and a Local Grower Structure/s, either party may refer the dispute to the Appeals Tribunal for determination.

[Clause 132 substituted by GN 700/2020 w.e.f. 1 July 2020]

**132A.** The ordinary expenses for the performance of the functions of each Local Grower Structure in terms of this agreement, as agreed in terms of a Co-operation Agreement if applicable, shall be financed by each grower contracted to deliver cane to a mill. After conclusion of a Co-operation Agreement if applicable, every grower contracted to deliver cane to a particular mill shall be deemed to have authorised that mill to make a deduction from his cane proceeds to fund the Local Grower Structure/s' ordinary expenses, and the Local Grower Structure/s may by written notice to the mill, require the mill to:

- (a) deduct the amount stipulated in that notice from the cane proceeds payable to each grower (which amount may not exceed the amount agreed in terms of the agreement concluded in terms of clause 130); and
- (b) pay the amount deducted to the Local Grower Structure/s, in the proportions agreed in any applicable Co-operation Agreement, provided that the Local Grower Structure/s shall use the amounts so recovered to perform their functions in terms of this agreement.

[Clause 132A inserted by GN 700/2020 w.e.f. 1 July 2020]

## CHAPTER 5

### PAYMENT FOR CANE

#### 133. Payment for Cane

For the cane delivered by a grower to a mill in each year, the grower's home mill shall pay the grower a price per ton based on the recoverable value of the cane, not less than the price determined in accordance with the provisions of this Chapter. Provided that, if a grower delivers cane to a mill in the month of March in any year, the South African Sugar Association may, on the application of the Mill Group Board concerned, declare that such cane shall, for the purposes of this Chapter, be deemed to be delivered in the following year.

#### 134. Cane Testing

The South African Sugar Association shall establish and maintain a Cane Testing Service which-

- (a) shall provide an audit function in respect of the determination of the total mass of recoverable value of cane entering each mill in accordance with clause 53; and
- (b) may undertake the sampling and laboratory procedures aimed at the determination of the recoverable value of cane delivered by growers to each mill, in respect of which the relevant Mill Group Board has entered into a contract with the South African Sugar Association for the provision of such services.

**135.** The South African Sugar Association shall issue and keep up-to-date a manual called the "Official Methods for the Determination and Distribution of Total Recoverable Value of Cane" ("the Official Methods Manual") and no amendment shall be effected to the Official Methods Manual, except with the prior written approval of the South African Sugar Association.

**136.** Each mill shall provide and maintain all such measuring equipment as specified by the South African Sugar Association from time to time for the measurement of the mass of cane and mixed juice and any other relevant substance derived from cane, which equipment shall also comply and be maintained in accordance with the Trade Metrology Act, 1973 (Act No. 77 of 1973), if applicable. The mass determinations shall be carried out in accordance with the procedures detailed in the Official Methods Manual.

**137.** The Mill Group Board at each mill shall be responsible for the determination of the total mass of recoverable value of

South African Sugar Association shall at all times have access to all facilities, data and other information which it deems necessary in order to verify the accuracy of the determination of the total mass of recoverable value of cane entering the mill.

138. Should the South African Sugar Association be dissatisfied with the determination of the total mass of recoverable value of cane entering a particular mill, it shall advise the relevant Mill Group Board of its findings and of the steps it requires to be taken to remedy the situation and may order amendments to the results of determinations by the Mill Group Board, with retrospective effect. The Mill Group Board shall implement the requirements of the South African Sugar Association Provided that should the Mill Group Board or the mill or grower(s) concerned dispute the validity of the steps or the amendments, they shall be entitled to refer the matter to the Administration Board for a ruling.
139. Each Mill Group Board shall provide and maintain all equipment, devices, chemicals and other facilities as are necessary to ensure compliance with the Official Methods Manual.

#### 140. Analysis of Cane Deliveries

In order to determine the recoverable value of each consignment of cane delivered to a mill by a grower-

- (a) individual cane consignments shall be tested in a manner and at a frequency determined by the Mill Group Board concerned from time to time;
- (b) each mill shall, in consultation with the Mill Group Board concerned, design and operate its mill cane yard and cane carrier systems so as to facilitate the determinations required in terms of clause 53;
- (c) when cane is delivered to a reloading site, the cane shall, as far as practicable in the light of the quantities of individual consignments, be stored so that the reload vehicle is filled with cane from one grower only;
- (d) notwithstanding the provisions of paragraphs (a) to (c), inclusive, if consignments from any particular growers are, in the opinion of the Mill Group Board concerned, consistently too small for separate sampling or cannot practically be separately sampled for good and sufficient reason, the Mill Group Board may direct that such consignments be grouped for combined sampling and testing and the results of such combined sampling and testing of the cane shall apply to all the cane consignments so grouped within a distribution period referred to in clause 142;
- (e) as far as practicable, consignments shall be crushed in the sequence of the dates and times of their delivery to a mill (and similarly reloaded on a first in first out basis at reloading sites); storage times in a mill yard shall be kept to a minimum and the Mill Group Board concerned shall monitor the delay of all consignments stored in a mill yard;
- (g) a Mill Group Board may annul or adjust any test results which it considers to be irrational;
- (h) any consignment of cane which for any reason is not sampled, shall be credited a recoverable value in accordance with the procedures provided for in the Official Methods Manual.

#### 141. Application of Adjusting Factors

The individual consignment analytical parameters arrived at shall then be adjusted in respect of each distribution period by the Mill Group Board concerned by the application of adjusting factors which shall be determined for the distribution period according to the Official Methods Manual.

142. Each distribution period, which shall normally be seven days, shall be fixed by the Mill Group Board concerned or, if the Mill Group Board is unable to agree, a distribution period shall be determined by the Administration Board.

#### 143. Variations

If at any particular mill circumstances should arise which warrant a variation from the strict interpretation of any of the procedures relating to the determination of recoverable value of cane the Mill Group Board concerned may, subject to the approval of the South African Sugar Association, authorise such variation on such basis and for such period as it shall determine.

#### 144. Monthly Cane Delivery Statements

Each Mill Group Board shall report monthly to the mill concerned and to the Administration Board and the Growers'

recoverable value thereof.

#### 145. Relative Recoverable Value and Payment

For the purpose of clauses 146 to 154, inclusive, the term "growers" in relation to a mill means all growers in respect of which such mill is their home mill.

146. Subject to any provisions herein to the contrary, each mill shall pay growers prices for cane deliveries based on the relative recoverable value of the cane, but Union Co-op may adopt its own system of payment for the growers contracted to deliver cane to its mill.
147. Notwithstanding anything to the contrary contained in this chapter, the prices payable by a mill to a grower in respect of sugar beet deliveries shall be subject to agreement between the mill concerned and the grower concerned.
148. Payment for all out of season cane shall be based on actual recoverable value and not relative recoverable value of the cane.
149. The percentage of the relative recoverable value of the cane delivered by growers to a mill shall be calculated in each year according to the following provisions-
- (a) In respect of the cane delivered by each grower, the percentage of the relative recoverable value of the cane crushed each week shall be calculated by adding the actual recoverable value percent of the cane as determined by the Mill Group Board concerned to the mean recoverable value percent cane for all the growers for the entire year concerned (excluding out of season cane deliveries), and deducting therefrom the mean recoverable value percent cane for all the growers during the week in which the cane is crushed; and
  - (b) until the actual mean recoverable value percent cane for the year is finally established for the mill concerned, the figure shall be estimated by the Mill Group Board concerned;
  - (c) each Mill Group Board shall advise the Administration Board monthly, at the time of submitting cane and recoverable value estimates, of the estimated mean recoverable value percent cane for the year of all the relative growers and should the Mill Group Board fail to agree on an estimate, the Administration Board shall determine the estimate;
  - (d) in order to assist with the determination of the estimates as accurately as possible, without derogating from the power conferred on the Mill Group Boards or the Administration Board in terms of paragraphs (a), (b) and (c), a committee comprising one representative of each of the Millers' and Growers' Associations and the South African Sugar Association shall determine independent statistical forecasts and review these at least monthly with a view to making recommendations to each Mill Group Board on the estimates of seasonal mean recoverable value percent cane of the relative mill, and the committee may co-opt additional members as it thinks fit; and
  - (e) when the actual mean recoverable value percent cane for the year is established for the mill concerned, a final adjustment shall be made to incorporate the actual seasonal mean in place of the estimated seasonal mean for the growers concerned.

150. At each mill the Mill Group Board shall calculate the relative recoverable value percent cane for each grower on a weekly mean basis and each grower shall be informed by the Mill Group Board concerned at the end of each week of his or her mean actual and relative recoverable value percent cane for the week, as well as of the mean for all growers for the week and the estimated corresponding mean for the year concerned.

151. Payment by a home mill to a grower for the cane delivered by the grower to a mill shall be made on the basis that-

- (a) a provisional payment for cane delivered in each respective mill month shall be made 30 days after the last day of the corresponding calendar month and the amount of each provisional payment shall be not less than the sum of the product obtained by multiplying 90% of the estimated price per ton of recoverable value, as determined in terms of the provisions of Chapter 6 for the immediately preceding month, by the accumulated recoverable value of the cane deliveries of the grower from the commencement of the year up to and including the last day of the mill month in respect of which the payment is due, less the total of all provisional payments previously made to him in respect of the year concerned;
- (b) a mill may differentiate between provisional payments made to different categories of growers as determined by the mill in the light of delivery patterns and other factors but in no case shall any provisional payment be based on less than 90% of the estimated price per ton of recoverable value and, in the event of such differentiation, the



- (c) a final payment shall be made on 31 March in each year and the amount of the final payment shall be the sum of the product obtained by multiplying the price per ton of recoverable value, as finally determined in terms of the provisions of Chapter 6 for that year, by the accumulated recoverable value of the cane deliveries of the grower during the year, less the total of all provisional payments previously made to the grower in respect of the year concerned together with retention interest calculated in accordance with the provisions of clause 152.

152. At each mill there shall be calculated retention interest values per ton of recoverable value which shall be the total of a calculation for each month during the year in which cane is delivered, divided by the total tons of the recoverable value of the cane delivered by the growers during the year, which calculation shall be made in accordance with the following formula:

$$(V \times W - R \times M) \times X \times Z$$

In which formula the factor

- (a) V represents the total cumulative tons of the recoverable value of the cane delivered from the commencement of the year up to and including the last day of the month concerned;
- (b) W represents the price per ton of the recoverable value of cane as finally determined for that year in accordance with the provisions of Chapter 6 or, if clause 153 applies, the deemed recoverable value price determined by the South African Sugar Association in terms of that clause in respect of the period concerned;
- (c) R represents the total cumulative tons of relative recoverable value of the cane delivered from the commencement of the year up to and including the last day of the month concerned;
- (d) M represents the estimated price per ton of the recoverable value of the cane used as the basis in determining the provisional payment for the month concerned, less the retention deducted by the mill;
- (e) P represents the period of time in months until the following payment (normally one month, except for the period between the last provisional payment and 31 March); and
- (f) Z represents the weighted average of the daily prime bank overdraft rate chargeable by the Sugar Association's bankers from 1 March in the preceding year to 28 February in the year concerned, less one half of a percentage point.

153. For the purpose of the formula set out in clause 152, if any notional local market price referred to in Chapter 6 is increased or reduced during any year, the South African Sugar Association shall-

- (a) estimate and determine the effect that such increase or reduction has on the finally determined recoverable value price for that year and the date from which it will have such effect; and
- (b) determine a deemed recoverable value price which excludes this effect and which shall be applied to all deliveries of cane up to the date so determined, and the recoverable value price as finally determined for that year which shall be applied in respect of the period after that date, subject to any directions or adjustments that may be laid down by the South African Sugar Association.

154. The retention interest payment to each grower shall be calculated by multiplying the tonnage of recoverable value of the cane delivered by him or her by the retention interest value per ton of recoverable value for the grower's home mill.

#### 155. Share of Filter Press Cake

Growers contracted to deliver cane to a mill shall have the right to participate in filter press cake residual from the milling process in accordance with such arrangements as may be made between that mill and its Mill Group Board and, failing that, such arrangements as may be decided by the Administration Board. If a mill loads, rails or delivers such cake, the cost of such service shall be paid by the growers concerned and delivery shall be in accordance with arrangements to be made to suit the convenience of the parties concerned.

#### 156. Access to Data

Any person duly authorised thereto by the South African Sugar Association shall have reasonable access to mills and their records relating to cane testing and to the records of the Mill Group Board concerned in the course of performing their duties or carrying out any authorised inspection or investigation. Each mill and any person duly authorised thereto

carrying out any inspection or investigation. The Millers' and Growers' Associations shall at all times have access to the data relating to cane testing in the possession of the South African Sugar Association.

#### 157. Financing of Cane Testing Service

The amount required for the costs and expenses of cane testing at each mill shall be apportioned between the mill and the growers concerned in the percentage share in the division of proceeds fixed in clauses 168 to 170: Provided, however, that the Mill Group Board may determine a different apportionment of such costs. Such costs shall be recovered by Mill Group Boards in terms of clause 68.

158. The amount required for the operating costs and expenses of cane testing at each mill where the service is provided by the South African Sugar Association, as determined from time to time by the South African Sugar Association, regardless of the method of testing employed may be advanced by the South African Sugar Association. The South African Sugar Association shall recover such amount on the basis determined by it.

159. The amount required for the costs and expenses of the audit function of the Cane Testing Service referred to in clause 134(a) shall be an industry obligation.

### CHAPTER 6

#### DETERMINATION AND DISTRIBUTION OF PROCEEDS AND CANE PRICES

#### 160. Interpretation

In this Chapter, unless the context otherwise indicates-

- (i) "Growers' Statutory Costs" means for the first year of the Transitional Period, the amount calculated by the sum of the costs of SACGA and SAFDA respectively approved by the Association's Council for the 2019/2020 season, escalated on 1 April 2020 by a rate equal to 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, expressed as a percentage, and for each season of the Transitional Period thereafter, the Growers' Statutory Costs for the immediately preceding season escalated on 1 April (such escalation being compounded each season) by a rate equal to 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, expressed as a percentage and less the Meeting Costs and other industry obligations in terms of clause 175.

[Clause 160 (i) deleted by GN 1082/2018 and reinserted by GN 700/2020 w.e.f. 1 July 2020]

- (ii) "the notional local market price" means the notional price attributed to local market brown sugar, refined sugar and molasses, respectively, determined from time to time by the South African Sugar Association in terms of clause 161; and

- (iii) "milling" includes refining and "miller" includes refiner.

161. The South African Sugar Association shall, for the purpose of determining the gross proceeds from the sale of production in terms of this Chapter, from time to time determine-

- (a) separately for brown and refined sugar, respectively, the notional local market price of sugar to be sold on the local market by millers, ex-factory in bulk or packed in one ton bags or 25kg pockets; and
- (b) for molasses, the notional market price of molasses to be sold on the local market by millers ex-factory and which will also represent the value of molasses utilised by millers.

162.

(a) The South African Sugar Association shall collect the Growers' Statutory Costs in each year by way of a levy imposed in terms of Chapter 7. MCP's shall be subject to a maximum levy equal to the lesser of R4.00 per ton cane delivered (and this R4.00 amount shall be adjusted for each season starting from 1 April 2021 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) and the average per ton cane levy required to recover the Growers' Statutory Costs each year.

(b) The South African Sugar Association shall pay to SACGA and SAFDA equal portions of the Growers' Statutory Costs so collected.

163. If the South African Sugar Association, in terms of the proviso to clause 133, declares that any cane delivered in March of any year shall be deemed to be delivered in the following year the sugar and molasses produced from such cane by the mill concerned shall similarly be deemed to be produced in that following year.

#### 164. Determination of Gross Proceeds

In respect of each year the South African Sugar Association shall determine the gross proceeds from the sale of production, which shall be the total of-

- (a) the proceeds of local market refined sugar, calculated by multiplying the tonnage of such sugar produced and estimated to be produced during the year, by the weighted average notional local market price of refined sugar applicable during that year;
- (b) the proceeds of local market brown sugar, calculated by multiplying the tonnage of such sugar produced and estimated to be produced during the year, by the weighted average notional local market price of brown sugar applicable during that year;
- (c) the proceeds of export sugar, including high test molasses, received by millers from Sasexcor, calculated by multiplying the tonnage of such sugar, including the sugar equivalent as determined by the South African Sugar Association of high test molasses produced for export and the local market during the year, by the net average export price per ton of all export sugar produced during the year, and for which purposes
  - (i) the net average export price shall comprise the net free alongside ship or free on board proceeds of such export sugar including any polarisation awards and quality bonuses or penalties to which shall be added other income applicable to export sugar such as, *inter alia*, address commission, despatch money and interest and from which proceeds shall be deducted any other costs or charges applicable to export sugar, excluding those which comprise industry obligations and any adjustment, in respect of a previous year, referred to in sub-paragraph (ii); and
  - (ii) the final determination of export proceeds for each year shall be made by the South African Sugar Association not later than 31 March in each year and, if certain components of proceeds require to be estimated in order that the final proceeds may be so determined, any differences between the actual and the estimate of such components shall be brought to account as an adjustment in the calculation of the net average export price for the following year;
- (d) the net amount of any adjustment in respect of a previous year, resulting from the differences referred to in sub-paragraph (c)(ii) between the estimated and actual amounts of any components of the export proceeds; and
- (e) the proceeds of final molasses including refinery molasses, produced and estimated to be produced during the year, as determined by the South African Sugar Association; which proceeds represent-
  - (i) proceeds from local market sales of molasses and the value of molasses utilised by millers, based on the notional local market price of molasses; and
  - (ii) proceeds from export market molasses being the total realisation of export market molasses sold, less costs of distribution, handling, storage and transport.

#### 165. Net Divisible Proceeds

In respect of each year, the South African Sugar Association shall determine the net divisible proceeds by deducting from the gross proceeds calculated in accordance with the provisions of clause 164, the industry obligations in respect of the year concerned.

#### 166. Allocation of Share of Net Divisible Proceeds to Growing

For the purpose of determining the price per ton of recoverable value of cane payable by mills to growers in each year there shall be allocated to growing a share being a percentage of the net divisible proceeds, which percentage shall, subject to clause 169, be 62,7327% in the 2000/2001 year, 62,8593% in the 2001/2002 year, 62,9852% in the 2002/2003 year and 63,0316% in the 2003/2004 year and thereafter.

167. The percentage of the net divisible proceeds allocated to growing shall be adjusted for any year during which the

by one half of a percentage point.

168. The basis of allocation of a share of the net divisible proceeds to growing referred to in clauses 166 and 167 may at any time be varied by agreement in writing by the Millers' Association and the Growers' Association, which Associations may at any time, if both agree, and shall during the year 2003/2004, meet with a view to reviewing the basis of allocation.

**169. Proceeds of Recoverable Value**

In respect of each year, the South African Sugar Association shall calculate and determine the amount of the share of the net divisible proceeds determined by it in accordance with the provisions of clause 165, which is to be allocated to growing in accordance with the provisions of clauses 166 and 167, subject, if applicable, to clause 168, by deducting the Growers' Statutory Costs for the year and adding the Meeting Costs Equalisation Amount, and then attributing the total amount of the remainder of the share of the net divisible proceeds allocated to growing to the total proceeds payable by mills to growers for cane deliveries in such year.

[Clause 169 amended by GN 1082/2018 and substituted by GN 700/2020 w.e.f. 1 July 2020]

**170. Price for Recoverable Value of Cane**

In each year, the price per ton of recoverable value payable by mills to growers for cane deliveries shall be equal to the recoverable value of such cane calculated by dividing the total proceeds determined as payable by mills to growers in accordance with the provisions of clause 169 by the total tonnage of the recoverable value of cane delivered during the year concerned.

**171. Provisional and Final Prices for Recoverable Value of Cane**

All elements of the determination of prices payable by mills to growers based on the recoverable value of cane deliveries shall be estimated by the South African Sugar Association at the commencement of each year and thereafter monthly during the year for the purpose of enabling provisional payments to be made to growers in accordance with the provisions of clause 151(a).

172. The final determination of such prices shall be made by the South African Sugar Association not later than 31 March in each such year for the year then ending.

**173. Production Schedules**

For the purpose of complying with the provisions of this agreement-

(a) each mill, including a sugar beet mill, shall during each year and according to a timetable to be issued before the commencement of the year submit to the South African Sugar Association returns, in such form as is determined from time to time by the South African Sugar Association, of-

- (i) in the case of a mill other than a sugar beet mill, the estimated annual and actual monthly deliveries to the mill of cane and of the recoverable value of cane;
- (ii) the estimated annual and actual monthly sugar and molasses production; and
- (iii) total sugar production in respect of the year concerned which must be supported by a certificate of verification by the relative mill's independent auditor in a form acceptable to the South African Sugar Association.

(b) in respect of each year the South African Sugar Association shall prepare-

- (i) final production schedules in respect of all cane supplied by growers to mills and the recoverable value thereof;
- (ii) final sugar and molasses production schedules in respect of each mill including sugar beet mills.

174. If any mill, including a sugar beet mill, fails to supply the information required in terms of clause 173, according to the timetable issued by the South African Sugar Association, then the South African Sugar Association may, in writing, call upon any such mill to supply such information as has not been supplied within 14 days of the date of such request. If the mill concerned does not supply such information within the 14 day period, then the South African Sugar Association may make an assessment of the relevant tonnage of cane, recoverable value of cane, sugar or molasses, as the case may be, and its assessment shall be binding, for all purposes, on such mill.

## CHAPTER 7

## SOUTH AFRICAN SUGAR ASSOCIATION AND DISPOSAL OF CROP

**175. SACGA, SAFDA and SASMA costs and Industry Obligations**

Subject to clause 176, all expenditure incurred by or at the instance or with the approval of the South African Sugar Association from time to time in accordance with the powers conferred upon it in terms of its Constitution or as provided for in this Agreement shall be industry obligations, and which expenditure, without limiting the generality of this provision, includes expenditure pursuant to obligations assumed in respect of loans raised by or at the instance of the South African Sugar Association and Meeting Costs.

[Clause 175 substituted by 1082/2018 and GN 700/2020 w.e.f. 1 July 2020]

176. The South African Sugar Association may at any time resolve that expenditure incurred by it or to be incurred by it shall not be an industry obligation by reason of the fact that such expenditure relates specifically to a particular grower, miller or refiner or to a particular group of growers, millers or refiners.

**177. Determination of Local Market and Export Market**

The South African Sugar Association shall in respect of each year determine the quantities of sugar required for the local market, including carry over stocks, and for the export market, respectively, and shall allocate to each mill, including a sugar beet mill, a quota of each such quantity. Quotas so allocated to each mill shall be allocated separately in respect of local market refined sugar and local market brown sugar, on the one hand, and to export sugar on the other hand, and shall be determined for each such category, as may be applicable in each year in the proportion which each mill's total saleable production of sugar bears to the total quantity of saleable sugar produced by all mills, including sugar beet mills.

178. In respect of each year the quantity of sugar required in respect of carry over stocks, shall be allocated proportionately to the respective mills in relation to their sales on the local market (excluding carry over stocks) in that year. Each mill will sell to the South African Sugar Association, which will be obliged to buy, the proportion so allocated to it.

**179. Exports**

There is no obligation on any mill, including a sugar beet mill, to export or provide for export that quantity of sugar that is represented by its export quota allocated in terms of clause 177.

180. Each mill shall in respect of each year provide and deliver to Sasexcor for export the quantity of sugar produced by it and which it does not sell on the local market. Sugar provided for export shall, unless the South African Sugar Association otherwise determines, comprise only bulk raw sugar and it shall otherwise comply with the terms and conditions as are or may be determined by the South African Sugar Association.

181. Sasexcor shall acquire from the respective mills all the sugar to be so exported and ensure that it is exported, according to the following provisions

- (a) Each mill shall in each year sell or ensure the sale to Sasexcor and Sasexcor shall purchase all sugar which the mill concerned is obliged to provide for export;
- (b) The prices payable by Sasexcor shall be determined by the South African Sugar Association from time to time in order to comply with the provisions of Chapter 6;
- (c) Payment for sugar purchased by Sasexcor shall be made to the respective mills when the proceeds of each sale are received by Sasexcor; Provided that-
  - (i) all export sugar delivered by mills in any one month, the proceeds of which are not received during the succeeding 90 days from the end of that month shall, on the expiry of the said 90 days, be financed by Sasexcor to the full extent of the estimated value at which export sugar is to be paid for by Sasexcor and the South African Sugar Association shall at the same time finance Sasexcor to the full extent of the estimated value of the proceeds which Sasexcor will pay for the sugar in accordance with the provisions of clause 186;
  - (ii) in the case of sugar sold in respect of which the proceeds are not received by 31 March in each year Sasexcor shall finance mills and the South African Sugar Association shall finance Sasexcor in accordance with the provisions of paragraph (i) until payment is received; and

- (iii) a mill which, as at the end of the year concerned, has not delivered in full to Sasexcor sugar to the full extent of its export obligation, shall not be entitled to receive payment in terms of the foregoing provisions in respect of the shortfall until the shortfall has been so delivered;
- (d) The sale and delivery to Sasexcor of sugar to be purchased by it shall be deemed to be effected immediately prior to delivery to the buyer to whom it is re-sold on condition that any export sugar unsold as at 31 March in any year shall be purchased by and delivered to Sasexcor on that date and the South African Sugar Association shall in turn purchase from Sasexcor, at a price to be agreed between them, any such sugar;
- (e) Sasexcor shall bear no risks or other liabilities or obligations in respect of any of the sugar purchased or sold by it and the South African Sugar Association shall accordingly indemnify Sasexcor and hold it harmless against any claim which Sasexcor may be compelled in law to meet, subject to any right of recovery which the South African Sugar Association or Sasexcor may have as against any mill or other person; and
- (f) The South African Sugar Association shall be responsible for ensuring that Sasexcor performs its functions in terms of this agreement.

#### 182. Redistribution of Local Market Proceeds

The provisions of clause 183 apply to all mills, including sugar beet mills and, in that clause, the expression "mill" includes a sugar beet mill.

183. In each year, if a mill sells on the local market a greater quantity of refined sugar or brownsugar (including carry over stocks) than the quantity allocated to it as its local market quota in terms of clause 177, that mill will pay to the South African Sugar Association an amount for redistribution amongst those mills which, during that year, sell on the local market quantities of refined sugar or brown sugar, respectively, which are less than their allocated local market quotas, according to the following provisions

- (a) During April of each year, the South African Sugar Association shall provisionally estimate each mill's local market quotas for refined sugar and brown sugar, respectively, and during the year shall continuously revise such estimates until the quotas are finally determined at the end of the year. References in this clause to a local market quota shall be construed as such quota from time to time so estimated, until finally determined.
- (b) The quarters referred to in this clause are sugar marketing quarters as determined by the South African Sugar Association in respect of each year, the last days of which need not coincide with the last days of the calendar quarters concerned.
- (c) In respect of each quarter ending on the last day of June, September, December and March, each mill ("an over performing mill") which sells on the local market more refined sugar or brown sugar ("the excess quantity") than the *pro rata* share that its local market quota bears to the aggregate quantity of all such sugar sold in the quarter concerned by all mills on the local market, shall pay an amount calculated in terms of paragraph (d) to the South African Sugar Association, for redistribution as hereinafter provided.
- (d) The amount payable in respect of each quarter to the South African Sugar Association by an over-performing mill will be equal to the excess quantity sold by that mill during that quarter multiplied by the weighted average of the notional local market price (determined by the South African Sugar Association in terms of chapter 6 applicable during that quarter), less (except in the case of a sugar beet mill) the financial levy imposed by the South African Sugar Association in terms of this Chapter applicable thereto, and less a manufacturing allowance determined according to rules laid down by the South African Sugar Association: Provided that-
  - (i) the amounts payable for redistribution in respect of the quarters ending on the last days of September, December and March will include a recalculation of the previous quarter or quarters (as the case may be) from the beginning of the year on a cumulative basis;
  - (ii) the manufacturing allowance will not be deducted from the amounts payable for redistribution in respect of the quarter ending on the last day of June and the manufacturing allowance for that quarter will then be taken into account as a deduction in the recalculation of the amounts payable for redistribution in the calculation made at the end of the September quarter;
  - (iii) any amount deducted in terms of the proviso set out in sub-paragraph (e)(i) from the amounts payable to under performing mills, will be credited in calculation of the amounts payable by over-performing mills for redistribution in respect of the quarter concerned, *pro rata* in relation to the amounts payable by them, respectively, and those credit will be reversed in the recalculation at the end of the next quarter;

- (iv) the calculations to be made at the end of the June, September and December quarters will each be based on the South African Sugar Association's latest estimate at that time of the respective mills' local market quotas for the year concerned and the final calculation to be made at the end of the March quarter will be based on the actual local market quotas for that year.
- (e) The amounts payable by over-performing mills to the South African Sugar Association in terms of the foregoing provisions shall then be redistributed by the South African Sugar Association to those mills ("under-performing mills"), respectively, which, during the quarter concerned, will have sold on the local market less refined sugar or brown sugar, respectively, than the pro rata shares that their local market quotas bear to the aggregate quantity of all such sugar sold by all mills on the local market during that quarter; which redistribution, subject to paragraph (f), shall be made pro rata in relation to the respective shortfalls of the mills concerned: Provided that, if, at the end of a quarter, an under-performing mill has not realised in full its previous year's carry-over stocks of sugar
- (i) an amount equal to the value of its unrealised carry-over stocks will be deducted in calculating the amount to be redistributed to that mill in respect of that quarter;
- (ii) the debit in respect of the amount so deducted will be reversed in the recalculation of the amount to be redistributed at the end of the next quarter.
- (f) If, in any quarter, a sugar beet mill is an under-performing mill, the South African Sugar Association shall adjust the pro rata shares of the amount to be redistributed in terms of paragraph (e) by adding back to the amount to be redistributed any financial levy that will have been deducted from the amount payable by each over-performing mill.
- (g) An amount payable by an over-performing mill for redistribution in terms of the foregoing provisions shall be paid within thirty days of the last day of the quarter concerned, except for an amount in respect of the final quarter which shall be payable upon the date on which, in terms of this agreement, the South African Sugar Association purchases carry-over stocks from mills and shall be set off, pro tanto, against the purchase price for such carry-over stocks.
- (h) In respect of each quarter, the amounts to be redistributed in terms of the foregoing provisions will be payable on the next day after the amounts payable by over-performing mills are due in terms of paragraph (9) and shall be paid by the South African Sugar Association whether or not it shall have received the amounts payable by over-performing mills. If the South African Sugar Association suffers any loss in consequence of a default by an over-performing mill, that loss will be borne as an industry obligation.
- (i) All calculations necessary to give effect to the foregoing provisions shall be undertaken by the South African Sugar Association.

184. The proceeds of final molasses referred to in paragraph (e) of clause 164, before the deduction of rebates, shall be subject to a financial redistribution amongst mills based on the molasses production of the respective mills, which redistribution shall be undertaken by the South African Sugar Association at the end of each year in accordance with rules laid down by the South African Sugar Association.

#### 185. Carry-Over and Export Obligations

The quantity of carry-over stocks required for the local market and the quantity of sugar to be exported in each year shall be determined in accordance with the constitution of the South African Sugar Association, the provisions of this agreement and such rules as may be laid down by the South African Sugar Association.

#### 186. Financing Arrangements

The following financing arrangements shall be carried out by the South African Sugar Association

- (a) all export sugar, local market high test molasses and export high test molasses delivered by mills in any one month, the proceeds of which are not received during the succeeding ninety days from the end of that month shall, on the expiry of the 90 days referred to in clause 181(c), be financed by the South African Sugar Association on the basis of 100% of the estimated export value thereof;
- (b) all export sugar, local market high test molasses and export high test molasses sold as at 31 March of each year, the proceeds of which are not received by that date, shall be financed by the South African Sugar Association on the basis of 100% of the estimated export value thereof, subject to clause 181(c)(iii);

the South African Sugar Association on and as at that date in order that the total output of each year may be regarded as sold during that year and the year's recoverable value prices may be properly determined with the least possible delay on the following basis-

- (i) the purchase price of sugar for sale in the local market shall be the notional local market price referred to in Chapter 6 applicable on 31 March of that year;
- (ii) the purchase price of export sugar, including the sugar equivalent as determined by the South African Sugar Association of high test molasses produced for export and the local market, shall be based on the estimated prices thereof as determined by the South African Sugar Association on the basis of the calculation of proceeds of export sugar referred to in clause 164(c); and
- (iii) each miller and refiner will undertake the realisation, on behalf of the South African Sugar Association, of the local market carry-over stocks which it will have sold to the South African Sugar Association and, within such period after realisation (being when the sugar concerned is sold to such miller's or refiner's customers) as will be laid down by the South African Sugar Association, shall pay to the South African Sugar Association the notional local market price or prices applicable on the date or dates of realisation; and
- (d) any final molasses sold as at 31 March of each year, the proceeds of which are not received by that date and any stocks of final molasses unsold as at 31 March of each year, shall be financed by the South African Sugar Association on the basis of 100% of the estimated net value thereof; and
- (e) the cost of financing local market sugar purchased in terms of paragraph (c) and of financing final molasses in terms of paragraph (d) shall be industry obligations.

#### 187. Sugar Transport

Millers shall be responsible for the transport and the costs of transport of export sugar produced by them, which transport and costs will cover delivery to the port of Durban or Maputo, or such other port as the South African Sugar Association may approve. A mill delivering sugar to a terminal or warehouse operated by the South African Sugar Association shall utilise a mode of transport suitable for the receiving facilities thereat and shall not, without the South African Sugar Association's prior written approval change that mode of transport.

188. The costs of loading export bulk raw sugar on board ships, including storage and handling will be borne by the South African Sugar Association and will be industry obligations.

189. All bulk raw sugar which is to be exported shall be delivered to and exported from the port of Durban or Maputo, unless otherwise agreed by the South African Sugar Association: Provided that, if the South African Sugar Association does not agree to allow a mill to deliver sugar to the port of Maputo (or another port approved by the South African Sugar Association) and the cost of transport to Durban exceeds what it would have been if delivered to Maputo (or such other approved port), the excess transport costs incurred by the mill concerned shall be borne by the South African Sugar Association as an industry obligation. Furthermore, should the South African Sugar Association not be able to make available to a mill its nearest qualifying port for the purposes of its export obligation, any increased cost of transport to another qualifying port shall be for the account of the South African Sugar Association.

#### 190. Imposition of Levies

Industry obligations and Growers' Statutory Costs shall be met by means of financial levies imposed upon sugar from time to time by the South African Sugar Association in terms of its constitution.

[Clause 190 substituted by GN 700/2020 w.e.f. 1 July 2020]

191. The expenditure of the South African Sugar Association referred to in clause 176 shall be met by means of financial levies imposed on any grower, miller or refiner or group of growers, millers or refiners as the South African Sugar Association may deem appropriate having regard to the nature of the expenditure concerned.

192. The levies referred to in clauses 190 shall be imposed upon all refiners and millers in respect of and pro rata in relation to the respective output of each miller and refinery in respect of any period and for that purpose-

- (a) "output" in relation to a refiner, means the tonnage of sugar of its own manufacture sold by it being that part of its saleable production as determined by the South African Sugar Association from time to time;
- (b) "output" in relation to a mill, means the tonnage of sugar of its own manufacture sold by it together with the tonnage of other sugar acquired and sold by it, after deduction of the tonnage thereof sold to a refiner, being that



- (c) "sold by it" shall include any sugar sold or disposed of by a refiner to a mill and the tonnage of sugar so sold by a refiner to a mill or by one mill to another mill, for whatever purpose, shall be leviable upon such sale on condition that this shall not preclude the pooling of the production of any grade of sugar and the levying thereof upon sale, on such basis as may be approved by the South African Sugar Association.

193. Each refiner and each miller shall within 14 days notify the South African Sugar Association in writing when called upon to do so of its respective output of sugar during a stated period and if any refiner or any miller declines or fails to notify the South African Sugar Association of its output for the relevant period, the South African Sugar Association may estimate the output of the refiner or miller concerned, on such information as is available to the South African Sugar Association, and charge the levies on such estimate.

194. Each such levy shall be a debt due to the South African Sugar Association and recoverable by it on such date in each month as the South African Sugar Association shall determine.

#### 195. Small Cane Growers' Financial Aid Fund

Notwithstanding the repeal of the Sugar Industry Agreement, 1979, the Small Cane Growers' Financial Aid Fund established in terms of clause 60(2) of that Agreement for the purpose of assisting those growers who may be eligible shall continue to exist and shall be administered by the South African Sugar Association in accordance with such regulations or directives as the South African Sugar Association may from time to time determine.

#### 196. Development Fund

Notwithstanding the repeal of the Sugar Industry Agreement, 1979, the Sugar Industry Development Fund established in terms of clause 61(1) of that Agreement for the purpose of promoting the development of sugar production and improving the overall economy of the Industry shall continue to exist and shall be administered by the South African Sugar Association in accordance with such directives or regulations as the South African Sugar Association may from time to time determine and the financing of that Fund shall be an industry obligation.

#### 197. Repeal of Sugar Industry Agreement, 1994

The Sugar Industry Agreement, 1994, published under Government Notice No. R592 of 31 March 1994, as amended, is hereby repealed.

#### 198. Transitional Provisions

Despite any other provision of this agreement, during the Transitional Period as contemplated in clause 198.5, words and phrases which are defined in the South African Sugar Association's Constitution shall have the same meaning in this agreement unless otherwise indicated or clearly apparent from the context and the following words and phrases have the meanings attributed to them in these Transitional Provisions and cognate expressions have similar meanings:

198.1 **MCP** means miller cum planter, that is, a grower which is wholly owned by a Milling Group but excluding:

198.1.1 any venture, without limitation and irrespective of its form, in which growers which are not themselves MCP have any direct interest (including a minority interest) in that venture;

198.1.2 any venture which operates on communal land, irrespective of whether or not a Milling Group owns that venture;

and MCP's shall only include those MCPs which notify the Administration Board, in writing, that they are MCPs

198.2 **Meeting Costs** means the total annual fixed fee referred to in clause 15(9)(k) of the South African Sugar Association's Constitution

198.3 **Meeting Costs Equalisation Amount** means the amount which comprises the difference between half the Meeting Costs and the amount calculated by applying to the Meeting Costs the percentage of the net divisible proceeds allocated to growing in terms of clause 166 as adjusted by clause 167 and/or clause 168 if either of these clauses applies.

198.4 **Milling Group** means a miller or refiner which produces saleable sugar or saleable sugar equivalent per season.

198.5 **Transitional Period** means from 1 July 2020 until 31 March 2024 or any later date determined in terms of

**198.6 Transitional Provisions** means clauses 198 to 207 of this agreement and clause 15 of the South African Sugar Association's Constitution;

**198.7 2018 Transitional Provisions** means the amendments to the Constitution and the Sugar Industry Agreement, 2000 promulgated in Government Gazette 41967 on 9 October 2018.

**199.** In applying the Transitional Provisions, the Transitional Provisions in the Constitution must be read together with the Transitional Provisions in the Sugar Industry Agreement, 2000, both as amended and applied during the Transitional Period. In applying the Transitional Provisions of this agreement, unless otherwise indicated or clearly apparent from the context, the Transitional Provisions of this agreement shall prevail over any of the other provisions of this agreement (the Sugar Industry Agreement, 2000) which conflict with or differ from, those Transitional Provisions.

**200.** The Transitional Provisions apply during the Transitional Period only.

**201.** After consultation with the South African Sugar Association, the Minister may amend the Transitional Provisions by publishing notice of the amendments in the Government Gazette.

**202.** After consultation with the South African Sugar Association, the Minister may extend the Transitional Period whenever necessary by publishing notice of each extension in the Government Gazette by the date on which the Transitional Period is due to expire.

**203.** This agreement shall come into effect on 1 July 2020.

**204.**

The provisions of this clause 204 apply in relation to the 2018 Transitional Provisions:

Anything done from 1 April 2018 until 9 October 2018 comprising amendments to the agreement in terms of section 4(1)(c) of the Act, both dates included, and which is done in accordance with, or to give effect to, or in anticipation of, the resolutions passed by the South African Sugar Association's Council on 15 March 2018 and 16 April 2018 and the South African Sugar Association at the special meeting on 16 April 2018 and the 2018 Transitional Provisions and anything else done by the South African Sugar Association in good faith in order to effect recognition and funding of SAFDA, shall be deemed to be valid in law.

Neither the South African Sugar Association nor any of the delegates, Councilors (including the South African Sugar 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 accordance with, or to give effect to, or in anticipation of:

- (i) the resolutions passed by the South African Sugar Association's Council on 15 March 2018 and 16 April 2018;
- (ii) the resolutions passed by the South African Sugar Association at the special meeting on 16 April 2018;
- (iii) the 2018 Transitional Provisions; and
- (iv) anything else done by the South African Sugar Association to recognise and fund SAFDA between 1 April 2018 and 9 October 2018, both dates included.

**205. Amendment of Sugar Industry Agreement, 2000**

The Sugar Industry Agreement, 2000, published under Government Notice No. 1208, Government Gazette 21139 of 3 May 2000 is hereby amended upon publication in the Government Gazette and with effect from 1 July 2020.

**206. Publication of this Agreement**

The publication of these amendments to the agreement in terms of section 4(1)(c) of the Act confirms that the Minister is satisfied that such amendments are in the interests of the sugar industry and not detrimental to the public interest.

[Transitional provisions by GN 1082/2018, amended by GN 444/2020 and substituted by GN 700/2020 w.e.f. 1 July 2020]



**TongaatHulett®**

"FA8" 139

24 February 2023

To: The South African Sugar Association  
Kwa-Shukela  
170 Flanders Drive  
Mount Edgecombe

Attention: M Ramkelawon  
[Mary.ramkelawon@sasa.org.za](mailto:Mary.ramkelawon@sasa.org.za)

Dear Madam,

**BUSINESS RESCUE OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL")**

- 1 Your letter dated 23 February 2023 headed Letter of Demand (the "**Subject Letter**") refers.
- 2 The business rescue practitioners of THL (the "**BRPs**") have considered the contents of the Subject Letter, which to a very great extent traverse ground already covered during prior discussions between representatives of the South African Sugar Association ("**SASA**") and the BRPs.
- 3 As articulated by the BRPs to various SASA representatives during the course of the aforementioned discussions, based on comprehensive legal advice received by the BRPs from their legal advisors (including Werksmans and Advocate Arnold Subel SC) the BRPs remain of the view that the obligation to pay the amounts claimed by SASA as due for payment by THL and referred to in paragraphs 3 and 4 of the Subject Letter (the "**Subject Amounts**") is capable of being, and is accordingly hereby, suspended under the provisions of section 136(2) of the Companies Act, 2008. The BRPs are aware that SASA, based on legal advice it has received, holds a different view on the matter, but no useful purpose will be served by a debate on the issue through correspondence.
- 4 In all of the aforementioned circumstances, it is denied that THL is presently obliged to pay to SASA any of the Subject Amounts, the payment of which will be dealt with in accordance with the provisions of the business rescue plan pertaining to THL still to be published.
- 5 The failure of the BRPs to deal with or respond to any matter or allegation contained in the Subject Letter, not specifically addressed herein, is not to be construed as an admission of the correctness

Amenzmayama Hill Road, Tongaat, 4400 - P O Box 3, Tongaat, 4400, KwaZulu-Natal, South Africa  
Telephone: +27 32 439 4000 Fax: +27 32 945 3333 • [www.tongaatt.com](http://www.tongaatt.com)

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Tongaatt Hulett Limited Registration Number: 1892/000610/06

thereof and the BRPs reserve the right to do so at a later juncture and in the appropriate forum, should they so elect.

- 6 Any action undertaken by SASA pursuant to the provisions of paragraph 7 of the Subject Letter, will be appropriately defended.

Yours faithfully,

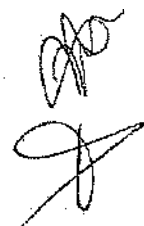


**For Tongaat Hulett Limited (In Business Rescue)**

Amenzinyama Hill Road, Tongaat, 4400 • P O Box 3, Tongaat, 4400, KwaZulu-Natal, South Africa  
Telephone: +27 32 438 4000 Fax: +27 32 845 3333 • www.tongaat.com

Tip-offs anonymous - Email: [Tongaat@tip-offs.com](mailto:Tongaat@tip-offs.com) Website: [www.tip-offs.com](http://www.tip-offs.com) FreeCall: 0600 212 187

Tongaat Hulett Limited Registration Number 1892/000510/06



**Output**

Output is the total value of goods and services produced in the economy during a given period of time. This figure is usually higher than gross domestic product (GDP) since output includes the value of all goods and services used or consumed in the production process (intermediate consumption).

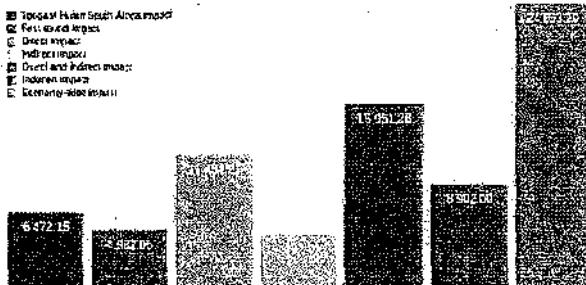
Tongaat Hulett South Africa's contribution to output, if its initial operational and capital expenditure are included, was R6 472 million in 2021, with operational expenditure contributing the most (98.33%) to the initial impact. Adding all the direct, indirect and induced impacts generated an economy-wide effect measuring R24 853 million. The initial impact of Tongaat Hulett South Africa contributed 0.06% to the economy of South Africa, while the economy-wide impact contributed 0.23%. For every R1 million of output generated by Tongaat Hulett South Africa, another R0.77 million of output was generated by the company's suppliers, R0.69 million by the suppliers' suppliers, and R1 million as a result of the spending of wages and salaries paid

by all all households in the value-chain. Overall generating a total economy-wide multiplier impact of R4 million. The largest economy-wide impacts were in the manufacturing, finance and business services, and agriculture, forestry and fishing industries.

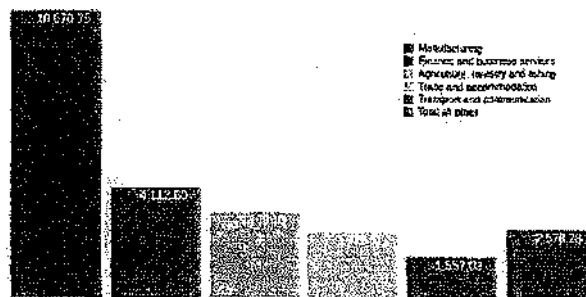
**Total expenditure impact on output in 2021**

Impact	Percentage	Multiplier
Tongaat Hulett South Africa	0.06%	1.00
First round	0.05%	0.77
Direct	0.11%	1.77
Indirect	0.04%	0.69
Direct and indirect	0.15%	2.46
Induced	0.08%	1.38
Economy-wide	0.23%	3.84

Impact on output (Rand million)



Impact on output by industry (Rand million)



**Compensation of employees**

Compensation of employees, or labour remuneration, includes salaries and wages paid to full-time and part-time employees (during peak and off-peak seasons) as well as any employee benefits such as bonuses and bursaries.

Total labour remuneration generated by the operational and capital expenditure of Tongaat Hulett South Africa amounted to R1 074 million in 2021, with operational expenditure contributing 97.59%. When adding the direct, indirect and induced impacts of the company's operations, the economy-wide impact generated was R4 779 million.

**Total expenditure impact on labour remuneration in 2021**

Impact	Percentage	Multiplier
Tongaat Hulett South Africa	0.04%	0.17
First round	0.03%	0.11
Direct	0.07%	0.28
Indirect	0.04%	0.14
Direct and indirect	0.11%	0.42
Induced	0.08%	0.31
Economy-wide	0.18%	0.74

the full sucrose price determined for the year commencing 1 May 1979 in respect of the whole quantity of his excess deliveries of B Pool sucrose less the sum paid to him therefor in terms of paragraphs 7 (1) and 8.

10. (1) Notwithstanding the provisions of paragraph 6 (3) and (4), should—

(a) an A Pool mill have less sucrose available to it in the year commencing 1 May 1980 for the reason that its growers delivered sucrose in excess of their total adjusted delivery quotas as reflected in the first schedule; or

(b) a B Pool mill have less sucrose available to it in the year commencing 1 May 1980 for the reason that its growers delivered sucrose in excess of the total of their effective adjusted delivery quotas; then

(c) such mill shall be paid in that year for the deficit between the total of its growers' adjusted delivery quotas and the quantity of sucrose actually delivered in that year the full sugar price for the year commencing 1 May 1979 up to the extent by which the total quantity of sucrose delivered by its growers exceeded their adjusted delivery quotas as reflected in the first and second schedules respectively, less the sucrose price and any payment made in terms of paragraph 8.

(2) Notwithstanding the provisions of paragraph 6 (3) or (4), should restrictive control of production be suspended in terms of clause 22 (1) (a) of the Agreement for the year commencing 1 May 1980—

(a) an A Pool mill shall be paid in that year the full sugar price for all cane crushed by it in the year commencing 1 May 1979 less all sums received by, or paid to, it in terms of paragraphs 6 and 8; and

(b) a B Pool mill which crushes cane in terms of paragraph 5 (5) shall be paid for the quantity of cane so crushed on the same basis as provided in (a).

11. (1) All payments due to mills and growers in terms of the provisions of this Schedule, save those payable in terms of the Agreement, shall be made in terms of rules which shall be determined by the Sugar Association.

(2) The Sugar Association may determine any matter not specifically provided for in this Schedule and generally frame rules of procedure necessary to give effect to subparagraph (1) and the other paragraphs of this Part which affect the financial relationship between mills.

volle sukroseprys betaal wat vir die jaar beginnende 1 Mei 1979 bepaal is ten opsigte van die totale hoeveelheid van sy oormaatlewering van B-poel-sukrose min die bedrag wat daarvoor ingevolge paragrawe 7 (1) en 8 aan hom betaal is.

10. (1) Ondanks die bepalings van paragraaf 6 (3) en (4), indien—

(a) 'n A-poel-meul minder sukrose in die jaar beginnende 1 Mei 1980 vir homself beskikbaar het omrede sy kwekers meer sukrose as hul totale aangepaste leweringkwotas soos aangegee in die eerste staat, gelewer het; of

(b) 'n B-poel-meul minder sukrose in die jaar beginnende 1 Mei 1980 vir homself beskikbaar het omrede sy kwekers meer sukrose as die totaal van hul effektiewe aangepaste leweringkwotas gelewer het; dan

(c) word sodanige meul in daardie jaar vir die verskil tussen die totaal van sy kwekers se aangepaste leweringkwotas en die hoeveelheid sukrose wat werklik in daardie jaar gelewer is, betaal teen die volle suikerprys vir die jaar beginnende 1 Mei 1979 na die mate waarin die totale hoeveelheid sukrose wat deur sy kwekers gelewer is, hul aangepaste leweringkwotas soos onderskeidelik in die eerste en die tweede staat aangegee, oorskry, min die sukroseprys en enige betaling ingevolge paragraaf 8 gedoen.

(2) Ondanks die bepalings van paragraaf 6 (3) of (4), indien beperkende produksiebeheer ingevolge klousule 22 (1) (a) van die Ooreenkoms vir die jaar beginnende 1 Mei 1980 opgeskort word—

(a) word 'n A-poel-meul in daardie jaar die volle suikerprys betaal vir alle riet wat deur dié meul gepers is in die jaar beginnende 1 Mei 1979 min alle bedrae ingevolge paragrawe 6 en 8 deur die meul ontvang of aan die meul betaal; en

(b) word 'n B-poel-meul wat riet ingevolge paragraaf 5 (5) pers, vir die hoeveelheid aldus gesterste riet betaal op dieselfde basis soos voorgeskryf in (a).

11. (1) Alle betalings verskuldig aan meule en kwekers ingevolge die bepalings van hierdie Bylae, uitgesonderd dié betaalbaar ingevolge die Ooreenkoms, geskied ingevolge reëls wat deur die Suikervereniging vasgestel word.

(2) Die Suikervereniging kan enige saak beslis waarvoor daar nie uitdruklik in hierdie Bylae voorsiening gemaak is nie en kan in die algemeen prosedurereëls opstel wat nodig is om aan subparagraph (1) en die ander paragrawe van hierdie Deel rakende die finansiële verhouding tussen meule onderling uitvoering te gee.

No. R. 860

27 April 1979

CONSTITUTION OF THE SOUTH AFRICAN SUGAR ASSOCIATION

I, Jan Christiaan Heunis, Minister of Economic Affairs, hereby publish in terms of section 2 (1) of the Sugar Act, 1978 (Act 9 of 1978), the terms of the Constitution of the South African Sugar Association as set forth in the Schedule hereto.

J. C. HEUNIS, Minister of Economic Affairs.

No. R. 860

27 April 1979

GRONDWET VAN DIE SUID-AFRIKAANSE SUIKERVERENIGING

Ek, Jan Christiaan Heunis, Minister van Ekonomiese Sake, publiseer hierby kragtens artikel 2 (1) van die Suikerwet, 1978 (Wet 9 van 1978), die bepalings van die Grondwet van die Suid-Afrikaanse Suikervereniging soos in die Bylae hiervan uiteengesit.

J. C. HEUNIS, Minister van Ekonomiese Sake.

SCHEDULE

CONSTITUTION OF THE SOUTH AFRICAN SUGAR ASSOCIATION.

1. Name and registered office.

(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 Province of Natal.

2. Membership and representation.

(1) Membership.—The members of the Association shall be the South African Sugar Millers' Association Limited and the South African Cane Growers' Association. They are hereinafter referred to as the Millers' Section and the Growers' Section respectively.

(2) Representation.—Each Section shall be represented in the Association by 18 delegates appointed by it. In addition Hulett's Refineries Limited shall have one representative, who shall, however, not be entitled to vote at meetings of the Association.

3. Administration.

(1) An Honorary President and Honorary Vice-President may be elected annually. They need not be delegates nor members of either Section.

(2) The affairs of the Association shall be administered by a Council consisting of a Chairman, a Vice-Chairman, and 14 Councillors elected annually at the general meeting, of whom seven shall be nominated by the delegates of the Millers' Section from among their number and seven shall be nominated by the delegates of the Growers' Section from among their number. The delegates of each Section may also nominate alternates to their elected Councillors from among their number, such alternates being elected annually at the general meeting. Any member failing by himself or his alternate to attend three consecutive meetings without leave of absence from the Council shall vacate office. Casual vacancies shall be filled by the Section which nominated the retired Councillor or alternate, subject to the approval of Council.

(3) The officers of the Association shall consist of a Chairman, Vice-Chairman, and Manager/s and/or Secretary. The Chairman and Vice-Chairman shall be elected annually at the general meeting of the Association on such terms as the Association may deem fit. They need not be delegates or members of either Section. Casual vacancies occurring in the offices of Chairman or Vice-Chairman shall be filled by Council, such appointees to hold office until the following general meeting. The Manager/s and/or Secretary shall be appointed on such terms and conditions as the Council may approve.

(4) 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 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 upon every committee. The Chairman and Vice-Chairman of the Association shall be ex-officio members of all committees if not actually appointed thereto.

BYLAE

GRONDWET VAN DIE SUID-AFRIKAANSE SUIKERVERENIGING

1. Naam en geregistreerde kantoor.

(1) Naam.—Die naam van die Vereniging is die "Suid-Afrikaanse Suikervereniging".

(2) Geregistreerde kantoor.—Die geregistreerde kantoor van die Vereniging is in die provinsie Natal geleë.

2. Lidmaatskap en verteenwoordiging.

(1) Lidmaatskap.—Die lede van die Vereniging is die Suid-Afrikaanse Suikermelenaarsvereniging Beperk en die Suid-Afrikaanse Rietkwekersvereniging. Hulle word hierna onderskeidelik die Melenaarsafdeling en die Kwekersafdeling genoem.

(2) Verteenwoordiging.—Elke afdeling word in die Vereniging verteenwoordig deur 18 afgevaardigdes, deur die betrokke afdeling benoem. Daarbenewens het Hulett's Refineries Beperk een verteenwoordiger, wat egter nie geregtig is om op die vergaderings van die Vereniging te stem nie.

3. Administrasie.

(1) 'n Erepresident en 'n Ere-vice-president kan jaarliks verkies word. Hulle hoef nie afgevaardigdes of lede van een van die twee afdelings te wees nie.

(2) Die sake van die Vereniging word bestuur deur 'n Raad wat bestaan uit 'n Voorsitter, 'n Vice-voorsitter, en 14 raadslede wat jaarliks op die algemene vergadering verkies word, van wie sewe deur die afgevaardigdes van die Melenaarsafdeling uit hulle gelede benoem word, en sewe deur die afgevaardigdes van die Kwekersafdeling uit hulle gelede benoem word. Die afgevaardigdes van elke afdeling kan ook plaasvervangers vir hulle verkose raadslede uit hulle gelede benoem, welke plaasvervangers jaarliks op die algemene vergadering verkies word. 'n Lid wat versuim om self, of deur sy plaasvervanger, drie agtereenvolgende vergaderings by te woon sonder verlof tot afwesigheid van die Raad, moet sy amp neerlê. Toevallige vakatures moet gevul word deur die afdeling wat die gewese lid of plaasvervanger benoem het, behoudens die goedkeuring van die Raad.

(3) Die ampsdraers van die Vereniging bestaan uit 'n Voorsitter, Vice-voorsitter, en Bestuurder/s en/of Sekretaris. Die Voorsitter en Vice-voorsitter word jaarliks op die algemene vergadering van die Vereniging verkies op sodanige voorwaardes as wat die Vereniging goed ag. Hulle hoef nie afgevaardigdes of lede van een van die twee Afdelings te wees nie. Toevallige vakatures wat in die amp van Voorsitter of van Vice-voorsitter ontstaan, moet deur die Raad gevul word, en so 'n aangestelde beklee die amp tot die volgende algemene vergadering. Die Bestuurder/s en/of Sekretaris word aangestel behoudens sodanige bepalinge en voorwaardes as wat die Raad goedkeur.

(4) Die Raad kan 'n uitvoerende komitee uit sy eie lede kies, bestaande uit soveel lede as wat die Raad besluit, en kies ook sodanige komitees as wat hy nodig ag. Die Raad bepaal die pligte van enige komitee wat deur hom aangestel is, en het die reg om sodanige pligte van tyd tot tyd te verander. Komitees moet sonder onnodige vertraging aan die Raad verslag doen. Alle komitees is onderworpe aan die voorskrifte en staan onder die beheer van die Raad. Tensy anders ooreengekom is, moet die Kwekersafdeling en die Melenaarsafdeling deur dieselfde getal lede in elke komitee verteenwoordig wees. Die Voorsitter en Vice-voorsitter van die Vereniging is ex officio lede van alle komitees indien hulle nie werklik daarin aangestel is nie.



(5) Auditors shall be elected at the general meeting in each year and their remuneration shall be fixed at such meeting for the past year's audit. Auditors shall be eligible for re-election, but no delegates shall be eligible as auditors. The auditors shall have the right of access at all times to the books and vouchers of the Association and shall be entitled to require from the Council and officers of the Association such information and explanations as may be necessary for the performance of their duties as auditors.

4. *Objects.*

The objects for which the Association is established are:

(1) To promote, foster, regulate, co-ordinate and assist with the production, storage, transport, handling and sale of sugar industry products.

(2) 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. Neither member shall 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 its intention to do so.

(3) To provide machinery for examining and settling major grievances amongst sections of the industry.

(4) To promote reciprocal and/or preferential arrangements as to duties and tariffs, with the object of fostering, stimulating and regulating the promotion of the sugar industry in South Africa.

(5) To take such steps as may be considered desirable to increase the consumption of sugar industry products, and to ensure that they will reach the consumer through the most direct and economical channels.

(6) To take steps for the improvement of the technical knowledge of persons engaged in the Sugar Industry.

(7) To establish from time to time an experiment station or experiment stations and a training 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.

(8) To maintain out of revenue any station or stations and any centre or centres so established.

(9) To deal with questions relating to labour.

(10) To make donations to whatever cause or for whatever purpose Council may decide and to sponsor where decreed advisable and in the interests of the Sugar Industry the arts, sport or whatever other activity Council may elect to support.

(11) To promote and assist in the cause of education in the Republic of South Africa or elsewhere.

(12) To collect and circulate statistics and other information on all matters of interest to the Sugar Industry.

(13) To guarantee staff housing loans on such terms and conditions as may be established.

(5) Ouditeurs moet op die algemene vergadering elke jaar verkies word en hulle besoldiging moet op sodanige vergadering vir die oudit van die afgelope jaar vasgestel word. Ouditeurs is herkiesbaar, maar geen afgevaardigdes mag as ouditeurs gekies word nie. Die ouditeurs het te alle tye reg van toegang tot die boeke en bewysstukke van die Vereniging en is geregtig om van die Raad en beamptes van die Vereniging sodanige inligting en verduidelikings te vereis as wat nodig mag wees vir die uitvoering van hulle pligte as ouditeurs.

4. *Doelstellings.*

Die doelstellings van die Vereniging is soos volg:

(1) Om die produksie, opberging, vervoer, hantering en verkoop van suikernywerheidsprodukte te bevorder, aan te help, te reguleer en te koördineer en daarmee behulpsaam te wees.

(2) Om die sienswyse van die Suikernywerheid aan die Volksraad, die Regering en ander openbare liggame en amptenare in die Republiek van Suid-Afrika en elders voor te lê op die wyse wat die Raad wenslik ag. Geeneen van die lede mag die Regering van die Republiek van Suid-Afrika of enige Staatsdepartement, of Volksraad oor enige saak rakende, of in die algemene belang van die Suikernywerheid, nader of vertoë aan hom rig sonder om die Vereniging vooraf 10 dae skriftelike kennis te gee van sy voorneme om dit te doen nie.

(3) Om voorsiening te maak vir die ondersoek en beslegting van ernstige griewe wat onder afdelings van die Nywerheid mag ontstaan.

(4) Om in verband met invoerregele en tariewe wedyrydse en/of voorkeurreelings te bevorder met die doel om die bevordering van die suikernywerheid in Suid-Afrika aan te moedig, te versterk en te reguleer.

(5) Om die stappe te doen wat wenslik geag word om die verbruik van suikernywerheidsprodukte te verhoog, en om te verseker dat dit die verbruiker langs die mees regstreekse en ekonomiese kanale bereik.

(6) Om stappe te doen ter verbetering van die tegniese kennis van persone wat in die Suikernywerheid werksaam is.

(7) Om van tyd tot tyd 'n proefstasie of proefstasies en 'n opleidingsentrum of opleidingsentrums te stig, en om vir daardie doel lenings met of sonder sekuriteit vir sodanige bedrae aan te gaan, teen sodanige rentekoerse en op sodanige voorwaardes as wat van tyd tot tyd nodig mag wees.

(8) Om uit inkomste enige stasie of stasies en enige sentrum of sentrums wat aldus gestig is, in stand te hou.

(9) Om vraagstukke aangaande arbeid te hanteer.

(10) Om skenkings te maak aan watter saak of vir watter doel die Raad ook al besluit skenkings gemaak moet word, en om waar dit wenslik en in belang van die Suikernywerheid geag word, die kunste, sport of watter ander aktiwiteit ook al te borg wat die Raad wens te ondersteun.

(11) Om die saak van die onderwys in die Republiek van Suid-Afrika of elders te bevorder en aan te help.

(12) Om statistieke en ander inligting oor alle sake van belang vir die Suikernywerheid, te versamel en te versprei.

(13) Om personeel-huislenings te waarborg behoudens sodanige voorwaardes en bepalinge as wat vasgestel mag word.



(14) To carry out all functions assigned to the Council or the Association in terms of the Sugar Act, 1978 (Act 9 of 1978—hereinafter referred to as the "Act") or the Sugar Industry Agreement, 1979 (hereinafter referred to as the "Agreement") determined thereunder.

(15) To exercise all such powers as are hereinafter conferred upon the Council of the Association or any committee thereof.

(16) To form any company, body or fund in order to implement any of the objects thereinbefore set out or to perform any functions ancillary or complementary thereto, and to hold the shares in any company formed to implement such objects and perform such functions.

(17) To do all such things as are in the opinion of the Association necessary, proper or advisable for the advancement generally of the industry, or which are incidental or conducive to the attainment of all or any of the above objects.

5. Powers of Council.

Without prejudice to the general power conferred upon the Council by Clause 3 (2) hereof it shall have and exercise the following powers and functions, namely:

(1) To control and regulate, year by year, the disposal of the total quantity of sugar manufactured by millers and refiners, and, to this end, to 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 quota of those quantities, subject only to the provisions of the Agreement and any regulation published under Section 10 of the Act or any section amending or replacing the same.

(2) To incur such expenditure as it may think necessary or desirable in carrying out the powers granted to it hereunder and in order to enable the Association to attain the objects thereinbefore set out and to fulfil the functions ascribed to the Association under the Act, and the Agreement published thereunder.

(3) To 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 to 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.

(4) To make levies upon growers, millers or refiners, or upon any one or other of or upon any group of growers, millers or refiners for the purpose of carrying out the terms of the Agreement and for the purpose of enabling the Association to fulfil obligations incurred by it in accordance with this Constitution.

(5) To decide on the policy to be followed from time to time in connection with the promotion and sale of sugar industry products in the local market and the export market.

(6) To originate, carry on, direct and control publicity and propaganda in connection with the promotion and sale of sugar industry products in the local market and the export market.

(7) To 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 to fix the amount or amounts of such rebates.

(14) Om alle funksies wat aan die Raad of die Vereniging opgedra is kragtens die Suikerwet, 1978 (Wet 9 van 1978—hierna die "Wet" genoem), of die Suikernywerheids-ooreenkoms, 1979 (hierna die "Ooreenkoms" genoem), uit te voer.

(15) Om alle sodanige bevoegdhede as wat hieronder aan die Raad of die Vereniging of enige komitee daarvan verleen is, uit te oefen.

(16) Om enige maatskappy, liggaam of fonds te stig ten einde enige van die doelstellings hiervoor in uiteengesit, te bereik of enige funksies bykomstig daarby of aanvullend daartoe uit te oefen, en om die aandele te besit in enige maatskappy wat gestig is om sodanige doelstellings te bereik en sodanige funksies uit te oefen.

(17) Om alle sodanige dinge te doen as wat na die mening van die Vereniging nodig, behoorlik of raadzaam is, vir die algemene vooruitgang van die Nywerheid, of wat gepaard gaan met of bevorderlik is vir die bereiking van alle of enige van bostaande doelstellings.

5. Bevoegdhede van die Raad.

Sonder om afbreuk te doen aan die algemene bevoegdheid aan hom by klousule 3 (2) hiervan verleen, word die Raad bekleed met onderstaande bevoegdhede en funksies naamlik:

(1) Om jaar vir jaar die beskikking oor die totale hoeveelheid suiker wat deur meulenaars en raffineerders vervaardig word te beheer en te reguleer en om, vir dié doel, die hoeveelheid suiker benodig vir die binnelandse mark, die hoeveelheid oordragvoorrade, die hoeveelheid suiker wat elke jaar uitgevoer moet word en elke meul se kwota van hierdie hoeveelhede, te bepaal behoudens die bepalings van die Ooreenkoms of enige regulasie uitgevaardig kragtens artikel 10 van die Wet of enige artikel wat daardie artikel wysig of vervang.

(2) Om sodanige koste aan te gaan as wat hy nodig of wenslik ag vir die uitoefening van die bevoegdhede wat hierby aan hom verleen word en om die Vereniging in staat te stel om die doelstellings te bereik wat hierbo uiteengesit is en om die funksies te verul wat by die Wet en by die Ooreenkoms wat ingevolge daarvan gepubliseer is, aan die Vereniging toegewys is.

(3) Om die prys per metrieke ton suikrose in riet en enige ander aangewese landbouprodukt ten opsigte van elke jaar nie later nie as die einde van die jaar te bepaal, en om sodanige prys in die begin van elke jaar en daarna maandeliks gedurende die jaar te skat ten einde betalings aan kwekers ooreenkomstig die bepalings van die Ooreenkoms moontlik te maak.

(4) Om heffings op te lê aan kwekers, meulenaars en raffineerders, of aan die een of ander van die kwekers, meulenaars of raffineerders of aan enige groep kwekers, meulenaars of raffineerders met die doel om die bepalings van die Ooreenkoms uit te voer en met die doel om die Vereniging in staat te stel om verpligtings wat hy ooreenkomstig hierdie Grondwet aangegaan het, na te kom.

(5) Om te besluit op die beleid wat van tyd tot tyd gevolg gaan word in verband met die promosie en verkoop van suikernywerheidsprodukte in die binnelandse mark en die uitvoermark.

(6) Om reklame en propaganda in verband met die promosie en verkoop van suikernywerheidsprodukte in die binnelandse mark en die uitvoermark te onderneem, vol te hou, te bestuur en te beheer.

(7) Om te oorweeg en te besluit aan welke persone of klasse persone of handelsinstansies kortings toegestaan gaan word in verband met die aankoop van enige suikernywerheidsprodukte en om die bedrag of bedrag van sodanige kortings te bepaal.

(8) To purchase, sell or deal in any sugar industry products or to form any companies or bodies to purchase, sell or deal in any sugar industry products.

(9) In furtherance of the objects of the Association to promote and assist in the cause of education in the Republic of South Africa, or elsewhere, to create one or more Trusts upon such terms and conditions in all respects, as the Council shall from time to time decide; to contribute to any such Trust such sum or sums of moneys as the Council shall from time to time decide; from time to time to appoint a trustee or trustees of any such Trust; to remove any such Trustee from office and to fill vacancies occurring in the office of trustee under any such Trust; to confer upon the Trustees of any such Trust, from time to time holding office, all such powers and duties as the Council shall from time to time deem necessary or expedient; and generally to do all such things and execute all such documents as the Council may from time to time deem necessary or expedient for the aforesaid purposes or any of them.

(10) To institute, conduct or defend, settle or abandon any legal proceedings and to compromise or submit to arbitration any claims by or against the Association or the Council.

(11) To enter into any agreement with such person/s or body/bodies, whether within the Republic of South Africa or outside, on such terms and conditions as the Association may think fit.

(12) To take out and hold patents.

(13) To form or become associated with such company/companies or body/bodies as the Association may think necessary or desirable and, in so doing, to collaborate with such one or more persons or bodies as the Association may, if it thinks fit, select.

(14) To acquire or hold shares in such companies or bodies as Council may consider desirable.

(15) To acquire, deal with and dispose of both movable and immovable property.

(16) To open a banking account or accounts as provided in Clause 6 hereof, and to determine who shall operate thereon.

(17) To raise loans for such amounts and on such terms and conditions as the Association may think fit, and to give security therefor.

(18) To invest money on such terms and conditions as Council may ordain.

(19) To carry out all functions assigned to the Council or the Association in terms of the Act and/or the Agreement as published thereunder.

(20) To 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.

(21) To delegate all or any of its powers conferred upon it by Clause 3 (2) 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.

(22) The Council shall exercise its powers under the control of the Association in general meeting, but no decision of such general meeting shall affect or invalidate any prior decision or act of the Council.

(8) Om enige suikernywerheidsprodukte te koop, te verkoop of daarmee handel te dryf of om maatskappye of liggame te stig om enige suikernywerheidsprodukte te koop, te verkoop of daarmee handel te dryf.

(9) Om in die nastrewing van die Vereniging se doelstelling om die saak van die onderwys in die Republiek van Suid-Afrika of elders te bevorder en aan te help, een of meer Trusts te skep behoudens sodanige bepalinge en voorwaardes, in alle opsigte, as wat die Raad van tyd tot tyd besluit; om tot enige sodanige Trust sodanige bedrag of bedrae geld by te dra as wat die Raad van tyd tot tyd besluit; om van tyd tot tyd 'n Trustee of Trustees vir enige sodanige Trust aan te stel; om enige sodanige Trustee uit sy amp te onthef en om vakatures te vul wat ontstaan in die amp van Trustee in enige sodanige Trust; om aan die Trustees van enige sodanige Trust; gedurende hulle ampstermyn sodanige bevoegdhede en pligte op te lê as wat die Raad van tyd tot tyd nodig of nuttig ag; en in die algemeen, om alle sodanige handeling te verrig en alle sodanige dokumente te verly as wat die Raad van tyd tot tyd nodig of nuttig ag vir genoemde doeleindes of vir enigeen daarvan.

(10) Om enige regsgeding in te stel, te voer of te verdedig, te skik of laat vaar en om enige eise deur of teen die Vereniging of die Raad, te skik of aan arbitrasie te onderwerp.

(11) Om enige ooreenkoms aan te gaan met sodanige persoon/persone, liggaam/liggame, hetsy in die Republiek van Suid-Afrika of daarbuite, op sodanige bedinge en voorwaardes as wat die Vereniging goed dink.

(12) Om patente uit te neem en te hou.

(13) Om sodanige maatskappy(e) of liggaam/liggame te stig of hom met sodanige maatskappy(e) of liggaam/liggame te verbind as wat die Vereniging nodig of wenslik ag, en om sodoende met een of meer sodanige persone of liggame saam te werk as wat die Vereniging na goëddunke mag uitkie.

(14) Om aandele te bekom en te besit in sodanige maatskappye of liggame as wat die Raad wenslik ag.

(15) Om sowel roerende as vaste eiendom te koop, te verkoop en daarmee handel te dryf.

(16) Om 'n bankrekening of -rekeninge te open soos in klousule 6 hiervan voorsien, en om te bepaal wie daarmee moet werk.

(17) Om lenings aan te gaan vir sodanige bedrae en op sodanige bedinge en voorwaardes as wat die Vereniging goed ag, en om sekuriteit daarvoor te verskaf.

(18) Om geld te belê op sodanige bedinge en voorwaardes as wat die Raad bepaal.

(19) Om al die funksies te vervul wat aan die Raad of die Vereniging toegewys is by die Wet en/of die Ooreenkoms daarkragtens gepubliseer.

(20) Om alles te doen wat gepaard gaan met die behoorlike uitoefening van die voorgenoemde bevoegdhede en van die funksies wat hierby aan hom opgedra is.

(21) Om al die bevoegdhede of enige daarvan wat by klousule 3 (2) en hierdie klousule aan hom verleen is, te deleger aan 'n komitee in klousule 3 bedoel. Enige besluit of handeling behoorlik geneem of verrig uit hoofde van enige sodanige delegering, word beskou as synde die besluit of handeling van die Raad self.

(22) Die Raad moet sy bevoegdhede onder die beheer van die Vereniging-in-algemene-vergadering uitoefen, maar geen besluit van sodanige algemene vergadering raak enige vorige besluit of handeling van die Raad of maak dit ongeldig nie.

**6. Finance.**

(1) The funds of the Association shall be banked 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. Every sum above R100 paid on behalf of the Association or any such committee, fund, division or department thereof shall be paid by cheque signed in such manner as the Council 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 above.

(3) The provisions of subclause (2) above 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.

**7. Meetings.**

(1) All meetings of the Association and of the Council shall be presided over by the Chairman of the Association and in his absence by the Vice-Chairman, whom failing, by a Chairman 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 fixed by the Council. The business of this meeting shall be to consider the report by the Council on the year's working of the Association and the duly audited balance sheet and statement of revenue and expenditure for the past year, to appoint auditors and fix their remuneration for the past audit, to elect a Chairman and Vice-Chairman, to elect a Council and alternates, and to do such other business as it is competent to transact at an annual general meeting. The meeting may also transact any special business.

(3) The Council may call a special meeting of delegates of the Association whenever it deems fit and the Chairman, or in his absence the Vice-Chairman, 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 transacted at a general or special meeting of the Association shall be given in the notice calling the meeting.

(4) Not less than seven (7) days' nor more than twenty-one (21) days' notice shall be given to all delegates of every general and/or special meeting of the Association, provided that—

(a) the Chairman, or in his absence the Vice-Chairman may convene a special meeting on less than seven (7) days' notice in the case of an emergency;

(b) in the case of any meeting, whether special or general, it shall not be competent to deal with any alteration of or addition to the Constitution of the Association unless twenty-one (21) days' notice

**6. Finansies.**

(1) Die fondse van die Vereniging moet op naam van die "Suid-Afrikaanse Suikervereniging" gebank word, of op naam van enige komitee, fonds, afdeling of departement van die Vereniging wat behoorlik ingevolge hiervan aangestel of gestig is. Elke bedrag oor R100 wat namens die Vereniging of enige sodanige komitee, fonds, afdeling of departement daarvan betaal word, moet per tjek betaal word, geteken op sodanige manier as wat van tyd tot tyd deur die Raad bepaal word.

(2) Geen winste of voordele van die Vereniging mag tussen die lede van die Vereniging of tussen of onder enige ander persone verdeel word nie en die fondse van die Vereniging mag slegs vir belegging of vir die doelstellings uiteengesit in klousule 4 hierbo, gebruik word.

(3) Die bepalinge van subklousule (2) hierbo moet nie vertolk word as sou dit die Vereniging verhoed om enige maatskappy waarvan die aktiwiteite bykomstig by of aanvullend tot die doelstellings van die Vereniging is, en waarvan al die aandele deur die Vereniging besit word, te magtig of in staat te stel om winste of voordele wat deur sodanige maatskappy gemaak en bewerkstellig is, in 'n stabilisasie- of soortgelyke fonds wat kragtens die Ooreenkoms ingestel is, te stort nie.

**7. Vergaderings.**

(1) Alle vergaderings van die Vereniging en van die Raad moet gelei word deur die Voorsitter van die Vereniging en, in sy afwesigheid, deur die Vice-voorsitter, en in sy afwesigheid, deur 'n voorsitter gekies deur die vergadering.

(2) 'n Algemene vergadering van die afgevaardigdes van die Vereniging moet een keer elke jaar binne ses maande na die sluiting van die boekjaar gehou word op sodanige tyd en plek as wat die Raad bepaal. Die werksaamhede van hierdie vergadering behels die oorweging van die verslag deur die Raad oor die werk van die Vereniging gedurende die afgelope jaar en die beoorlik geouditeerde balansstaat en staat van inkomste en uitgawes vir die afgelope jaar, die aanstelling van ouditeurs en die vaststelling van hulle besoldiging vir die afgelope ondit, die verkiesing van 'n Voorsitter en Vice-voorsitter, die verkiesing van 'n Raad en plaasvervangers, en die behandeling van sodanige ander sake as wat op 'n algemene jaarvergadering afgehandel kan word. Die vergadering kan ook enige spesiale sake behandel.

(3) Die Raad kan na goeë dunks 'n spesiale vergadering van afgevaardigdes van die Vereniging byeenroep, en die Voorsitter, of in sy afwesigheid, die Vice-voorsitter moet 'n spesiale vergadering van afgevaardigdes van die Vereniging byeenroep wanneer hy ook al deur een van die twee afdelings versoek word om dit te doen. Besonderhede van die spesiale sake wat op 'n algemene of spesiale vergadering van die Vereniging behandel moet word, moet verstrekkend word in die kennisgewing wat die vergadering belê.

(4) Minstens sewe (7) dae maar hoogstens een-en-twintig (21) dae kennis moet aan alle afgevaardigdes gegee word van elke algemene en/of spesiale vergadering van die Vereniging. Met dien verstande dat—

(a) die Voorsitter, of in sy afwesigheid, die Vice-voorsitter, 'n spesiale vergadering met minder as sewe (7) dae kennisgewing in 'n noodgeval kan belê;

(b) in die geval van enige vergadering, hetsy spesiaal of algemeen, dit nie toelaatbaar is om enige wysiging van of byvoeging by die Grondwet van die Vereniging te behandel nie tensy een-en-twintig (21)

of such meeting shall have been given. The period of notice shall be calculated from the day of the posting or delivery of the said notice, whichever is the earlier.

(5) The quorum for the general meeting of the Association shall be twenty (20) delegates personally present, of whom at least eight (8) shall be delegates from each Section. The quorum for any special meeting of the Association shall be ten (10) delegates personally present, of whom at least four (4) shall be delegates from each Section. 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 be 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 form a quorum.

(6) Meetings of the Council shall be held as occasion may require, but at least once a quarter. At meetings of the Council six members personally present shall form a quorum provided that they include at least two representatives of each Section. 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 day be 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 quarter of an hour from the time appointed for the meeting the members present shall be a quorum.

(7) 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.

### 8. Voting.

(1) At general and special meetings of the Association each delegate shall be entitled to one vote. All questions arising at such meetings shall be determined by a majority representing two-thirds of the votes of the delegates present at the meeting provided that such majority includes votes from both Sections. The Standing Chairman and Vice-Chairman 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 Standing Chairman or Vice-Chairman.

(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 such meetings shall be determined by a majority of votes provided such majority includes votes of councillors (or in their absence, their alternates) appointed by both Sections. The Standing Chairman and Vice-Chairman 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 Standing Chairman or Vice-Chairman.

dae kennis van sodanige vergadering gegee is. Die kennisgewingtydperk word bereken vanaf die dag waarop genoemde kennisgewing gepos of afgelewer is, watter ook al die vroegste is.

(5) Die kworum vir die algemene vergadering van die Vereniging is twintig (20) afgevaardigdes wat persoonlik teenwoordig is, van wie ten minste agt (8) afgevaardigdes van elke Afdeling moet wees. Die kworum vir 'n spesiale vergadering van die Vereniging is tien (10) afgevaardigdes wat persoonlik teenwoordig is, van wie ten minste vier (4) afgevaardigdes van elke Afdeling moet wees. Indien 'n kworum nie teenwoordig is 'n halfuur na die vasgestelde tyd waarop die vergadering moet begin nie, word die vergadering uitgestel tot dieselfde dag in die volgende week op dieselfde tyd en plek, of indien daardie dag 'n openbare vakansiedag is, tot die eersvolgende dag wat nie 'n openbare vakansiedag is nie, en indien daar op sodanige uitgestelde vergadering 'n halfuur na die vasgestelde tyd vir die aanvang van die vergadering nog geen kworum teenwoordig is nie, maak die aanwesige lede 'n kworum uit.

(6) Vergaderings van die Raad moet gehou word na gelang dit nodig is, maar ten minste een keer per kwartaal. Op vergaderings van die Raad maak ses lede wat persoonlik teenwoordig is 'n kworum uit, mits daar ten minste twee lede van elke Afdeling in hulle geledere is. Indien 'n kworum 'n halfuur na die vasgestelde aanvangstyd van die vergadering nog nie teenwoordig is nie, word die vergadering tot dieselfde dag in die volgende week op dieselfde tyd en plek uitgestel, of, indien daardie dag 'n openbare vakansiedag is, tot die eersvolgende dag wat nie 'n openbare vakansiedag is nie, en indien daar op sodanige uitgestelde vergadering 'n kwartier na die vasgestelde aanvangstyd van die vergadering nog nie 'n kworum teenwoordig is nie, maak die aanwesige lede 'n kworum uit.

(7) Enige lid van een van die twee Afdelings of enige ander persoon kan met instemming van die vergadering as 'n waarnemer 'n vergadering van die Raad of van enige komitee of subkomitee deur die Vereniging of Raad aangestel, bywoon.

### 8. Stemming.

(1) Op algemene en spesiale vergaderings van die Vereniging is elke afgevaardigde geregtig op een stem. Alle sake wat op enige sodanige vergadering te berde gebring word, word beslis by 'n meerderheid van stemme wat twee-derdes van die stemme van die aanwesige afgevaardigdes verteenwoordig, met dien verstande dat sodanige meerderheid stemme van albei afdelings moet insluit. Die vaste Voorsitter en Vice-voorsitter mag nie op sodanige vergaderings stem nie. Dit geld egter nie vir 'n afgevaardigde wat in die afwesigheid van die vaste Voorsitter of Vice-voorsitter aangestel is om die stoel te beklee nie.

(2) Op alle vergaderings van die Raad is elke raads-lid, of in sy afwesigheid, sy plaasvervanger, geregtig op een stem. Alle sake wat op sodanige vergaderings te berde gebring word, word by meerderheid van stemme beslis, met dien verstande dat sodanige meerderheid die stemme moet insluit van raadslede (of in hulle afwesigheid, hul plaasvervangers) wat deur albei afdelings aangestel is. Die vaste Voorsitter en Vice-voorsitter mag nie op sodanige vergaderings stem nie. Dit geld egter nie vir 'n persoon wat in die afwesigheid van die Voorsitter of Vice-voorsitter aangestel is om die stoel te beklee nie.

(3) The proviso to subclauses (1) and (2) of this clause shall not apply if the meeting be one which has stood adjourned for lack of a quorum. At such adjourned meetings questions shall be determined by the required majority of votes of those present whether the majority includes votes from both Sections or not.

(4) Unless otherwise determined by the Council—

(a) at all meetings of committees appointed in terms of clause 3 (4), 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 of votes, provided such majority includes votes of members (or in their absence their alternates) representing both Sections;

(c) the Chairman and Vice-Chairman of the Association, whether appointed to or as *ex officio* members of such committees, shall not exercise a vote at such meetings.

9. *Third parties.*

In the event of the Association or Council refusing or neglecting to make any levy which is required for the purpose of meeting any obligation or liability duly incurred by them to any third party, such party shall be entitled to make application to the Court to compel the making 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 made by some person or persons duly appointed thereto and in that behalf by the Court, and to that extent the levy provisions of this Constitution shall be deemed to be an agreement between the Association and the members thereof for the benefit of such third party, of which such third party may avail himself by making such application as hereinbefore provided. The deletion or alteration of this Clause shall not affect any such third party in respect of any liability or obligation incurred prior thereto.

10. *Indemnity.*

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 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 these presents. Any liability imposed upon the Association by this Clause may be met by means of a levy made under Clause 5 and shall for that purpose be deemed to be an industry obligation.

11. *Alteration of Constitution.*

No alteration or addition to this Constitution shall be made unless decided upon by a vote at a general or special meeting of which twenty-one (21) days' notice in writing has been given. Any such alteration or amendment shall be conditional upon the consent of the Minister (as defined in section 2 of the Act or any Section amending or replacing the same) being obtained to such alteration or amendment and the publication

(3) Die voorbehoudsbepaling in subklousules (1) en (2) van hierdie klousule is nie van toepassing indien die vergadering een is wat weens gebrek aan 'n kworum uitgestel was nie. Op sodanige uitgestelde vergaderings word alle sake met die vereiste meerderheid van stemme van die aanwesiges beslis hetsy die meerderheid stemme insluit uit albei afdelings al dan nie.

(4) Tensy anders deur die Raad bepaal—

(a) is, op alle vergaderings van komitees wat ingevolge klousule 3 (4) aangestel is, elke lid, of in sy afwesigheid sy plaasvervanger, geregtig op een stem;

(b) moet alle sake wat op sodanige vergaderings te berde gebring word, by meerderheid van stemme beslis word, met dien verstande dat sodanige meerderheid stemme insluit van lede (of in hulle afwesigheid, hul plaasvervangers) wat beide Afdelings verteenwoordig;

(c) mag die Voorsitter en Vice-voorsitter van die Vereniging, hetsy aangestel in, of *ex officio*-lede van, sodanige komitees, nie 'n stem op sodanige vergaderings uitbring nie.

9. *Derde partye.*

Ingeval die Vereniging of Raad weier of nalaat om 'n heffing op te lê wat nodig is om aan 'n verpligting behoorlik deur hulle aangegaan, of aanspreeklikheid behoorlik deur hulle opgeloopt ten opsigte van enige derde party, te voldoen, is sodanige derde party geregtig om by die Hof aansoek te doen om die opheffing van die nodige heffing kragtens die bevoegdhede in hierdie Grondwet verleen, af te dwing, of, by gebreke daarvan, om 'n bevel waarby magtiging verleen en las gegee word dat sodanige heffing opgelê moet word deur die een of ander persoon of deur persone deur die Hof behoorlik daartoe en ten opsigte daarvan aangestel, en in daardie mate word die heffingsbepalings van hierdie Grondwet beskou as 'n ooreenkoms tussen die Vereniging en die lede daarvan ten gunste van sodanige derde party, waarvan sodanige derde party gebruik kan maak deur sodanige aansoek te doen soos hierbo bepaal. Die skraping of wysiging van hierdie klousule raak nie enige sodanige derde party wat betref enige aanspreeklikheid of verpligting wat tevore ontstaan het nie.

10. *Vrywaring.*

Enige lid van die Raad of van enige komitee deur hom aangestel (en elke werknemer van die Vereniging) word hierby deur die Vereniging gevrywaar en skadeloos gestel ten opsigte van enige persoonlike aanspreeklikheid hom ten laste gelê ingevolge of in verband met die behoorlike uitoefening of uitvoering deur die Raad of enige sodanige komitee, van enige bevoegdhede of funksies wat kragtens of ingevolge hierdie Ooreenkoms aan hom verleen is of verleen mag word. Enige verpligting wat by hierdie klousule die Vereniging opgelê word, kan nagekom word deur middel van 'n heffing kragtens klousule 5, en word vir daardie doel as 'n nywerheidsverpligting beskou.

11. *Wysiging van Grondwet.*

Geen wysiging van of toevoeging aan hierdie Grondwet mag gemaak word nie tensy daartoe besluit is deur stemming op 'n algemene of spesiale vergadering waarvan een-en-twintig (21) dae skriftelik kennis gegee is.

Enige sodanige verandering of wysiging is onderworpe aan die verkryging van die Minister se toestemming (soos omskryf in artikel 2 van die Wet of enige artikel wat gemelde artikel wysig of vervang) tot sodanige verandering of wysiging, en die afkondiging



of such alteration or amendment in terms of section 2 (2) of the said Act or any section amending or replacing the same. The publication of such alteration or amendment in terms of such section shall be conclusive proof of the consent of the said Minister thereto.

12. Interpretation.

Any terms which are defined in the Sugar Act, 1978 (Act 9 of 1978), or the Sugar Industry Agreement, 1979, published thereunder (both as amended or replaced from time to time) shall, whenever they are used in this Constitution unless the context indicates otherwise, bear the meanings ascribed thereto from time to time in such Act or Agreement.

No. R. 859

27 April 1979

**CONTROL OVER THE EXPORT OF SUGAR AND SUGAR INDUSTRY PRODUCTS**

The Minister of Economic Affairs has in terms of section 10 of the Sugar Act, 1978 (Act 9 of 1978), after consultation with the South African Sugar Association, made the regulations set out in the Schedule hereto.

**SCHEDULE**

1. In these regulations—

"Act" means the Sugar Act, 1978 (Act 9 of 1978);  
 "Agreement" means the Sugar Industry Agreement published under section 4 (1) of the Act;

and any other word or expression defined in the Act shall, unless the context otherwise indicates, have the meaning so defined.

2. No person shall export sugar or any sugar industry product from the Republic of South Africa to any other country or territory other than those countries and territories referred to in clause 52 (4) of the Agreement, namely the territory of South-West Africa, Lesotho, Botswana, Transkei, Bophuthatswana, and other independent states, formerly parts of the Republic of South Africa, as and when they are established, except under a permit issued by the Secretary for Industries.

3. Any person wishing to obtain a permit referred to in regulation 2 shall apply to the Secretary for Industries, Pretoria.

4. Any person who contravenes any provision of regulation 2 shall be guilty of an offence, and liable upon conviction to a fine not exceeding R500 or to imprisonment not exceeding a period of six months, or to both such fine and such imprisonment.

van sodanige verandering of wysiging ingevolge artikel 2 (2) van genoemde Wet of enige artikel wat dit wysig of vervang. Die afkondiging van sodanige verandering of wysiging ingevolge sodanige artikel is afdoende bewys van genoemde Minister se toestemming daartoe.

12. Vertolking.

Enige uitdrukking omskryf in die Suikerwet, 1978 (Wet 9 van 1978) of in die Suikernywerheids-ooreenkoms, 1979, wat daarkragtens afgekondig is (beide soos van tyd tot tyd gewysig of vervang), het, wanneer dit in hierdie Grondwet gebruik word, die betekenis wat van tyd tot tyd in sodanige Wet of Ooreenkoms daaraan toegeken word, tensy uit die samehang anders blyk.

No. R. 859

27 April 1979

**BEHEER OOR DIE UITVOER VAN SUIKER EN SUIKERNYWERHEIDPRODUKTE**

Die Minister van Ekonomiese Sake het kragtens artikel 10 van die Suikerwet, 1978 (Wet 9 van 1978), na ooreenkoms met die Suid-Afrikaanse Suikervereniging, die regulasies uitgevaardig wat in die Bylae hiervan uiteengesit is.

**BYLAE**

1. In hierdie regulasies beteken—

"Wet" die Suikerwet, 1978 (Wet 9 van 1978);  
 "Ooreenkoms" die Suikernywerheids-ooreenkoms gepubliseer kragtens artikel 4 (1) van die Wet;

en het enige ander woord of uitdrukking wat in die Wet omskryf is daardie betekenis, tensy uit die samehang anders blyk.

2. Niemand mag suiker of 'n suikernywerheidsprodukt uit die Republiek van Suid-Afrika na enige ander land of gebied, uitgesonderd daardie lande en gebiede wat in klousule 52 (4) van die Ooreenkoms genoem word, naamlik die gebied Suidwes-Afrika, Lesotho, Botswana, Transkei, Bophuthatswana, en ander onafhanklike state wat voorheen deel van die Republiek van Suid-Afrika uitgemaak het, na gelang hulle tot stand kom, uitvoer nie behalwe kragtens 'n permit deur die Sekretaris van Nywerheidswese uitgereik.

3. 'n Persoon wat 'n permit in regulasie 2 vermeld, verlang, moet by die Sekretaris van Nywerheidswese, Pretoria, daarom aansoek doen.

4. Enigiemand wat enige bepaling van regulasie 2 oortree, begaan 'n misdryf en is by skuldigebevinding strafbaar met 'n boete van hoogstens R500 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sodanige boete sowel as sodanige gevangenisstraf.

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### AGROPLANTAE

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### THE ONDERSTEPSPOORT JOURNAL OF VETERINARY RESEARCH

Die "Onderstepoort Journal of Veterinary Research" word deur die Staatsdrukker, Pretoria, gedruk en is verkrygbaar van die Direkteur, Afdeling Landbou-inligting, Departement van Landbou-tegniese Dienste, Privaatsak X144, Pretoria, 0001, aan wie ook alle navrae in verband met die tydskrif gerig moet word.

Hierdie publikasie is 'n voortsetting van die "Reports of the Government Veterinary Bacteriologist of the Transvaal" wat terugdateer tot 1903 en waarvan 18 verskyn het tot 1932. Dit is gevolg deur 40 volumes van die "Onderstepoort Journal". Tans bestaan elke volume uit vier nommers wat teen R2 binnelands en R2,50 buitelands per nommer van bogenoemde adres verkrygbaar is.

Direkteure van laboratoriums ens. wat begerig is om publikasies om te ruil moet in verbinding tree met die Direkteur, Navorsings-instituut vir Veeartsenykunde, Pk. Onderstepoort, 0110, Republiek van Suid-Afrika.

Verkoopbelasting moet by binnelandse bestellings ingesluit word.

### AGROANIMALIA

This publication is a continuation of the South African Journal of Agricultural Science Vol. 1 to 11, 1958-1968 and deals with Animal Production and Technology, Livestock Management and Ecology, Physiology, Genetics and Breeding, Dairy Science and Nutrition. Four parts of the journal are published annually.

Contributions of scientific merit on agricultural research are invited for publication in this journal. Directions for the preparation of such contributions are obtainable from the Director, Agricultural Information, Private Bag X144, Pretoria, to whom all communications in connection with the journal should be addressed.

The journal is obtainable from the above-mentioned address at R1,50 per copy or R6 per annum, post free (Other countries R1,75 per copy or R7 per annum).

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### AGROANIMALIA

Hierdie publikasie is 'n voortsetting van die Suid-Afrikaanse Tydskrif vir Landbouwetenskap Jaargang I tot 11, 1958-1968 en bevat artikels oor Dierproduksie en -tegnologie, Diereversorging en -ekologie, Fisiologie, Genetika en Teelt, Suivelkunde en Voeding. Vier dele van die tydskrif word per jaar gepubliseer.

Verdienselike landboukundige bydraes van oorspronklike wetenskaplike navorsing word vir plasing in hierdie tydskrif verwelkom. Voorskrifte vir die opstel van sulke bydraes is verkrygbaar van die Direkteur, Landbou-inligting, Privaatsak X144, Pretoria, aan wie ook alle navrae in verband met die tydskrif gerig moet word.

Die tydskrif is verkrygbaar van bogenoemde adres teen R1,50 per eksemplaar of R6 per jaar, posvry (Buitelands R1,75 per eksemplaar of R7 per jaar).

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### PHYTOPHYLACTICA

This publication is a continuation of the South African Journal of Agricultural Science Vol. 1 to 11, 1958-1968 and deals with Entomology, Zoological Plant Pests, Nematology, Plant Pathology, Microbiology, Mycology, Taxonomic Studies, Biology and Control. Four parts of the journal are published annually.

Contributions of scientific merit on agricultural research are invited for publication in this journal. Directions for the preparation of such contributions are obtainable from the Director, Agricultural Information, Private Bag X144, Pretoria, to whom all communications in connection with the journal should be addressed.

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Hierdie publikasie is 'n voortsetting van die Suid-Afrikaanse Tydskrif vir Landbouwetenskap Jaargang I tot 11, 1958-1968 en bevat artikels oor Entomologie, Dierkundige Plantplae, Nematologie, Plantpatologie, Mikrobiologie, Mikologie, Taksonomiese Studies, Biologie en Beheer. Vier dele van die tydskrif word per jaar gepubliseer.

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Verkoopbelasting moet by binnelandse bestellings ingesluit word.



## THE FLOWERING PLANTS OF AFRICA

This publication is issued as an illustrated serial, much on the same lines as Curtis's Botanical Magazine, and for imitating which no apology need be tendered.

The desire and object of the promoters of the publication will be achieved if it stimulates further interest in the study and cultivation of our indigenous plants.

The illustrations are prepared mainly by the artists at the Botanical Research Institute, but the Editor welcomes contributions of suitable artistic and scientific merit from kindred institutions.

Each part contains 10 plates and costs R5 per part (other countries R5,25 per part). Two, three or four parts may be published annually, depending on the availability of illustrations. A volume consists of four parts. From Volume 27, the price per volume is: Cloth binding, R30; morocco binding, R35 (other countries, cloth binding R31; morocco binding R36).

Obtainable from the Director, Division of Agricultural Information, Private Bag X144, Pretoria.

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## DIE BLOMPLANTE VAN AFRIKA

Hierdie publikasie word uitgegee as 'n geïllustreerde reeks, baie na die aard van Curtis se "Botanical Magazine". Die doel van die werk is om die skoonheid en variasie van vorm van die flora van Afrika aan die leser bekend te stel, om belangstelling in die studie en kweek van die inheemse plante op te wek, en om plantkunde in die algemeen te bevorder.

Die meeste van die illustrasies word deur kunstenaars van die Navorsingsinstituut vir Plantkunde gemaak, dog die redakteur verwelkom geskikte bydraes van 'n wetenskaplike en kunsstandaard afkomstig van verwante inrigtings.

Onder huidige omstandighede word twee dele van die werk gelyktydig gepubliseer, maar met onreëlmatige tussenpose; elke deel bevat tien kleurplate. Intekengeld bedra R5 per deel (buitelands R5,25 per deel): Vier dele per band. Vanaf band 27 is die prys per band in linne gebind R30; in moroccoleer gebind R35. (Buitelands, linne gebind R31; moroccoleer R36).

Verkrygbaar van die Direkteur, Afdeling Landbou-inligting, Privaatsak X144, Pretoria.

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## AGROCHEMOPHYSICA

This publication is a continuation of the South African Journal of Agricultural Science Vol. 1 to 11, 1958-1968 and deals with Biochemistry, Biometry, Soil Science, Agricultural Engineering, Agricultural Meteorology and Analysis Techniques. Four parts of the journal are published annually.

Contributions of scientific merit on agricultural research are invited for publication in this journal. Directions for the preparation of such contributions are obtainable from the Director, Agricultural Information, Private Bag X144, Pretoria, to whom all communications in connection with the journal should be addressed.

The journal is obtainable from the above-mentioned address at R1,50 per copy or R6 per annum, post free (Other countries R1,75 per copy or R7 per annum).

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## AGROCHEMOPHYSICA

Hierdie publikasie is 'n voortsetting van die Suid-Afrikaanse Tydskrif vir Landbouwetenskap Jaargang 1 tot 11, 1958-1968 en bevat artikels oor Biochemie, Biometrika, Grondkunde, Landbou-ingenieurswese, Landbouweerkunde en Ontledingstegnieke. Vier dele van die tydskrif word per jaar gepubliseer.

Verdienstelike landboukundige bydraes van oorspronklike wetenskaplike navorsing word vir plasing in hierdie tydskrif verwelkom. Voorskrifte vir die opstel van sulke bydraes is verkrygbaar van die Direkteur, Landbou-inligting, Privaatsak X144, Pretoria, aan wie ook alle navrae in verband met die tydskrif gerig moet word.

Die tydskrif is verkrygbaar van bogenoemde adres teen R1,50 per eksemplaar of R6 per jaar, posvry (buitelands R1,75 per eksemplaar of R7 per jaar).

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A taxonomic treatment of the flora of the Republic of South Africa, Lesotho, Swaziland and South West Africa. To be completed in 33 volumes, not in numerical sequence.

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'n Taksonomiese behandeling van die flora van die Republiek van Suid-Afrika, Lesotho, Swaziland en Suidwes-Afrika. Sal bestaan uit 33 volumes, nie in numeriese volgorde nie.

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Deel 2 (1977): Prys R16. Buitelands R20, posvry.

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Vol. 9 (1978): Prys R4,25. Buitelands R5,30, posvry.

Verkrygbaar van die Direkteur, Afdeling Landbou-inligting, Privaatsak X144, Pretoria.

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### MEMOIRS OF THE BOTANICAL SURVEY OF SOUTH AFRICA

The memoirs are individual treatises usually of an ecological nature, but sometimes taxonomic or concerned with economic botany. Thirty-nine numbers have been published, some of which are out of print.

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### MEMOIRS VAN DIE BOTANIESE OPNAME VAN SUID-AFRIKA

Die memoirs is individuele verhandelings, gewoonlik ekologies van aard, maar soms handel dit oor taksonomiese of ekonomiese-plantkundige onderwerpe. Nege-en-dertig nommers is reeds gepubliseer waarvan sommige uit druk is

Verkrygbaar van die Direkteur, Afdeling Landbou-inligting, Privaatsak X144, Pretoria.

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE AND INDUSTRY

NO. 1082

09 OCTOBER 2018

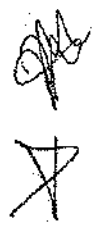
NOTICE IN TERMS OF SECTION 2 AND 4 OF THE SUGAR ACT, 1978  
(ACT NO. 9 OF 1978)

1. By virtue of the powers vested in me in terms of section 2 and 4 of the Sugar Act, 1978 (Act No. 9 of 1978), I Dr Rob Davies, Minister of Trade and Industry, hereby publish transitional provisions in respect of –
  - (a) the Constitution of the South African Sugar Association (Annexure 1); and
  - (b) the Sugar Industry Agreement, 2000 (Annexure 2).
2. This Notice shall be deemed to have commenced on 1 April 2018.



DR ROB DAVIES, MP  
MINISTER OF TRADE AND INDUSTRY

DATE: 2/10/2018



**Annexure 1**

**CONSTITUTION OF THE SOUTH AFRICAN SUGAR ASSOCIATION**

**15. Transitional Provisions**

(1) Despite any other provision of this Constitution, during the Transitional Period contemplated in clause 15(1)(e), the following words and phrases have the meanings attributed to them in this clause 15 and cognate expressions have similar meanings:

- (a) **Growers' Section** means SACGA and SAFDA;
- (b) **SACGA** means the South African Cane Growers' Association NPC and its successors in title;
- (c) **SAFDA** means the South African Farmers' Development Association and its successors in title;
- (d) **Transitional Constitution** means the Association's Constitution as amended by the Transitional Provisions by publication in the Government Gazette;
- (e) **Transitional Period** means from 1 April 2018 until 31 March 2020 or any later date determined in terms of clause 15(5);
- (f) **Transitional Provisions** means this clause 15 and clauses 198 to 207 of the Sugar Industry Agreement, 2000.

(2) In applying the Transitional Provisions, the Transitional Provisions in the Constitution must be read together with the Transitional Provisions in the Sugar Industry Agreement, 2000, both as amended and applied during the Transitional Period.

(3) The Transitional Provisions apply during the Transitional Period.

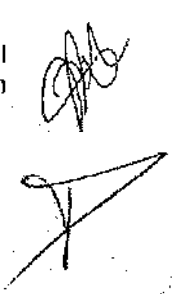
(4) After consultation with the Association, the Minister may amend the Transitional Provisions, by publishing notice of the amendments in the Government Gazette.

(5) After consultation with the Association, the Minister may extend the Transitional Period whenever necessary by publishing notice of each extension in the Government Gazette by the date on which the Transitional Period is due to expire.

(6) The Constitution is deemed to have been amended with effect from 1 April 2018.

(7) The publication of the Transitional Constitution in terms of section 2(2) of the Act is conclusive proof of the consent of the Minister thereto.

(8) Anything done from 1 April 2018 until the date of publication of the Transitional Constitution in terms of section 2(2) of the principal Act, both dates included, and which



is done 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 Transitional Provisions 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 in 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 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 Transitional Provisions and anything else done by the Association in good faith in order to effect recognition and funding of SAFDA between 1 April 2018 and the date on which the Transitional Constitution is published in terms of section 2(2) of the Act, both dates included.

(9) The Transitional Provisions apply only during the Transitional Period as follows:

#### **Membership and Representation**

- (a) The members of the Association shall be the South African Sugar Millers' Association NPC, SACGA and SAFDA;
- (b) SACGA and SAFDA shall collectively comprise the Growers' Section;
- (c) Each Section shall be represented by 24 delegates, provided that SACGA and SAFDA shall each be entitled to 12 delegates to the Growers' Section;

#### **Administration**

- (d) The affairs of the Association shall be administered by a Council consisting of a Chairperson and 2 Vice-Chairpersons and all references in the Transitional Constitution to the Vice-Chairman shall be replaced with reference to 2 Vice-Chairpersons;
- (e) A person nominated by each of the Millers' Section, SACGA and SAFDA shall be elected as Chairperson and the 2 Vice-Chairpersons respectively;
- (f) The Association's Council shall comprise 32 Councillors appointed at a meeting of the Association, of whom 16 shall be nominated by the delegates of the Millers' Section, 8 shall be nominated by SACGA's delegates of the Growers' Section and 8 shall be nominated by SAFDA's delegates of the Growers' Section;
- (g) The delegates of the Millers' Section may nominate a total of 6 alternates to its elected Councillors, the delegates of SACGA may nominate a total of 3 alternates to its elected Councillors and the delegates of SAFDA may nominate a total of 3 alternates to its elected Councillors. During 2018, all alternates shall be appointed at a special meeting of the Association and thereafter all alternates shall be appointed annually at the general meeting of the Association;

- (h) Casual vacancies of Councillors elected to represent the Growers Section shall be filled by whichever of SACGA or SAFDA nominated the absent Councillor;
- (i) On every Association committee, SACGA and SAFDA shall be equally represented as the Growers' Section;

#### Meetings

- (j) All meetings of the Association and of its Council shall be presided over by the Chairperson of the Association and in his or her absence, by 1 of the 2 Vice-Chairpersons, failing which, by a chairperson elected by the meeting;
- (k) Despite clause 7(3), during 2018 a special meeting of the delegates of the Association shall be held at such time and place as may be determined by the Association's Council to elect a Chairperson and Vice-Chairpersons and to appoint Councillors and alternates;
- (l) The quorum for any general meeting of the Association shall be 27 delegates personally present, of whom at least 12 shall be delegates from the Millers' Section, 6 shall be delegates from SACGA and 6 shall be delegates from SAFDA;
- (m) The quorum for any special meeting of the Association shall be 13 delegates personally present, of whom at least 6 shall be delegates from the Millers' Section, 3 shall be delegates from SACGA and 3 shall be delegates from SAFDA;
- (n) The quorum of any meeting of the Association's Council shall be 9 Councillors personally present provided that:
  - (i) they include at least 3 Councillors appointed by the Millers' Section and 3 Councillors appointed by the Growers' Section;
  - (ii) of the Councillors appointed by the Growers' Section, at least 1 Councillor is appointed by SACGA and 1 Councillor is appointed by SAFDA;
- (o) The Department of Trade and Industry may attend as an observer at any meeting of the Association's Council;

#### Voting

- (p) All questions arising at general and special meetings of the Association shall be determined by a majority representing more than 80% of the delegates present at the meeting, provided that such majority must include votes from the Millers' Section and the Growers' Section and that the votes from the Growers' Section must include votes by delegates appointed by SACGA and SAFDA, respectively;
- (q) All questions arising at meetings of the Association's Council shall be determined by a majority representing more than 80% of the votes cast, provided that such majority must include votes of Councillors nominated by the Millers Section and the Growers' Section and that the votes from the Growers' Section must include votes by Councillors appointed by SACGA and SAFDA, respectively;

- (r) 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, questions shall be determined by a majority comprising more than 80% of the votes of those present irrespective of whether those votes include votes from the Millers' Section and the Growers' Section and irrespective of whether the votes from the Growers' Section include votes from SACGA and SAFDA, respectively;
- (s) The quorum for every Association committee shall be 40% of the members of that committee personally present, provided that those present must include at least 2 representatives of the Miller's Section and 1 representative of each of SACGA and SAFDA, respectively;
- (t) All questions arising at meetings of the Association's committees shall be determined by a majority representing more than 80% of 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 votes from SACGA and SAFDA, respectively.

**Other Amendments – Clause 6(4)**

With effect from the date of publication of these amendments in terms of section 2 (2) of the Act, the reference in clause 6 to section 1 of the Financial Institutions (Investment of Funds) Act, 1984 is replaced by reference to the Financial Institutions (Protection of Funds) Act, 28 of 2001 and the reference to the Stock Exchanges Control Act, 1985 is replaced with reference to the Financial Markets Act, 19 of 2012.



Annexure 2

**SUGAR INDUSTRY AGREEMENT, 2000**

**Transitional Provisions**

198. Despite any other provision of this agreement, during the Transitional Period as contemplated in clause 198.5, the following words and phrases have the meanings attributed to them in this clause 198 and cognate expressions have similar meanings:
- 198.1 **Growers' Section** means, during the Transitional Period, SACGA and SAFDA;
- 198.2 **SACGA** means the South African Cane Growers' Association NPC and its successors in title;
- 198.3 **SAFDA** means the South African Farmers' Development Association and its successors in title;
- 198.4 **Transitional Constitution** means the South African Sugar Association's Constitution as amended by publication in the Government Gazette;
- 198.5 **Transitional Period** means from 1 April 2018 until 31 March 2020 or any later date determined in terms of clause 15.4 of the South African Sugar Association's Constitution;
- 198.6 **Transitional Provisions** means clauses 198 to 207 of this agreement read with clause 15 of the South African Sugar Association's Constitution.
199. In applying the Transitional Provisions, the Transitional Provisions in the Constitution must be read together with the Transitional Provisions in the Sugar Industry Agreement, 2000, both as amended and applied during the Transitional Period.
200. The Transitional Provisions apply during the Transitional Period only.
201. After consultation with the South African Sugar Association, the Minister may amend the Transitional Provisions by publishing notice of the amendments in the Government Gazette.
202. After consultation with the South African Sugar Association, the Minister may extend the Transitional Period whenever necessary by publishing notice of each extension in the Government Gazette by the date on which the Transitional Period is due to expire.
203. This agreement is deemed to have been amended with effect from 1 April 2018.

and anything else done by the South African Sugar Association in good faith in order to effect recognition and funding of SAFDA, shall be deemed to be valid in law. Neither the South African Sugar Association nor any of its delegates, Councillors (including the South African Sugar 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 accordance with, or to give effect to, or in anticipation of, the resolutions passed by the South African Sugar Association's Council on 15 March 2018 and 16 April 2018 and the South African Sugar Association at the special meeting on 16 April 2018 and the Transitional Provisions and anything else done by the South African Sugar Association to recognize and fund SAFDA between 1 April 2018 and the date on which the amendments to the Sugar Industry Agreement, 2000 are published in terms of section 4(1)(c) of the Act, both dates included.

205. The Transitional Provisions apply only during the Transitional Period as follows:

**Sugar Industry Administration Board**

205.1 The persons appointed by the Growers' Associations to the Administration Board in terms of clause 11(c) shall comprise 1 person appointed by SACGA and 1 person appointed by SAFDA;

**Sugar Industry Appeals Tribunal**

205.2 SACGA and SAFDA may each appoint 1 person to the Sugar Industry Appeals Tribunal provided that SACGA and SAFDA's appointees shall collectively have 1 vote on the Sugar Industry Appeals Tribunal;

**Mill Group Boards**

205.3 Each Mill Group Board shall have the power to undertake such tasks and duties as may from time to time be assigned to it by agreement between representatives of SACGA and SAFDA and the mill concerned;

205.4 SACGA and SAFDA shall be equally represented on all Mill Group Boards except where agreed otherwise by them and recorded in a written agreement which is signed on behalf of both SACGA and SAFDA;

205.5 Of the minimum of 2 grower members provided for in clause 58(a), 1 shall be appointed by SACGA and 1 by SAFDA;

205.6 Despite clause 58(c), SACGA (which may make appointments through the Local Grower Council) and SAFDA shall each appoint half the grower members of the Mill Group Board;



204. Anything done from 1 April 2018 until the date of publication of the Transitional Provisions comprising amendments to the agreement in terms of section 4(1)(c) of the Act, both dates included, and which is done in accordance with, or to give effect to, or in anticipation of, the resolutions passed by the South African Sugar Association's Council on 15 March 2018 and 16 April 2018 and the South African Sugar

- 205.7 Despite clause 59, casual vacancies of the grower members on a Mill Group Board shall be filled, or alternate members appointed, by whichever of SACGA (which may include appointments made through its Local Grower Council) or SAFDA appointed the absent member;
- 205.8 Despite clause 61(a), the SACGA and SAFDA appointed grower members of each Mill Group Board shall have 1 collective vote;

**SACGA, SAFDA and SASMA costs and Industry Obligations**

- 205.9 Clause 160(i) is hereby deleted;
- 205.10 Clause 162 is hereby deleted;
- 205.11 The phrase " , after the deduction of the Growers' Association costs for the year" in clause 169 is hereby deleted;
- 205.12 Clause 175 is hereby substituted with the following clause:

- "175 Subject to clause 176, all expenditure incurred by or at the instance or with the approval of the South African Sugar Association from time to time in accordance with the powers conferred upon it in terms of its Constitution or as provided for in this Agreement shall be industry obligations, and which expenditure, without limiting the generality of this provision, includes:
- (a) expenditure pursuant to obligations assumed in respect of loans raised by or at the instance of the South African Sugar Association;
  - (b) the "Growers Associations' costs" that is the sum of SACGA's and SAFDA's respective costs of operation and administration:
    - (i) which, for the 2018/2019 season shall be those costs reflected in the final written budgets which SACGA and SAFDA respectively provide to the South African Sugar Association by no later than 30 September 2018;
    - (ii) for the 2019/2020 season shall be those costs reflected in the final written budgets which SACGA and SAFDA respectively provide to the South African Sugar Association by 1 April 2019;
  - (c) the Millers' Association's costs of operation and administration:
    - (i) which, for the 2018/2019 season shall be those costs reflected in the final written budget which the Millers' Association provides to the South African Sugar Association by no later than 30 September 2018;
    - (ii) for the 2019/2020 season shall be those costs reflected in the final written budget which the Millers' Association provides to the South African Sugar Association by 1 April 2019."

**Amendment of Sugar Industry Agreement, 2000**

206. The Sugar Industry Agreement, 2000, published under Government Notice No. 1208, Government Gazette 21139 of 3 May 2000 is hereby amended by this agreement with effect from 1 April 2018.

**Publication of this Agreement**

207. The publication of this agreement in terms of section 4(1)(c) of the Act confirms that the Minister is satisfied that such amendment is in the interests of the sugar industry and not detrimental to the public interest.

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. R. 700

23 JUNE 2020

NOTICE OF AMENDMENTS TO THE CONSTITUTION OF THE SOUTH AFRICAN  
SUGAR ASSOCIATION AND THE SUGAR INDUSTRY AGREEMENT, 2000  
IN TERMS OF SECTION 2 AND 4 OF THE SUGAR ACT, 1978  
(ACT NO. 09 OF 1978)

AND

NOTICE OF DESIGNATION OF THE SUGAR INDUSTRY IN TERMS OF SECTION  
10(3)(b)(iv) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998)

I Ebrahim Patel, Minister of Trade, Industry and Competition hereby –

- (a) in terms of section 2(2) and section 4(1)(b)(i) of the Sugar Act, 1978 (Act No. 09 of 1978); and after consultation with the South African Sugar Association ("SASA") -
- (i) publish the amendments to the Constitution of SASA and the Sugar Industry Agreement, 2000, as embodied in **Annexure A & B** respectively; and
  - (ii) inform interested parties that the Constitution and Agreement, incorporating all the amendments, can be accessed on the dtic website: [www.thedtic.gov.za](http://www.thedtic.gov.za).

- (b) after consultation with the Minister of Agriculture, Land Reform and Rural Development, designate the sugar industry in terms of section 10(3)(b)(iv) of the Competition Act, 1998 (Act No. 89 of 1998) for a period of 12 months, which period may be extended as necessary by notice in the Government Gazette, to support the economic development, growth, transformation and stability of the sugar industry in line with the objectives of the proposed Sugar Masterplan, as set out in the **Explanatory Memo** attached hereto; and
- (c) determine that this Notice shall commence on 1 July 2020.



MR EBRAHIM PATEL

MINISTER OF TRADE, INDUSTRY AND COMPETITION

DATE:



## EXPLANATORY MEMO

### **MATTERS RELATING TO THE SUGAR INDUSTRY: DEVELOPMENT OF A SUGAR MASTERPLAN, DESIGNATION OF THE INDUSTRY IN TERMS OF THE COMPETITION ACT AND AMENDMENTS TO THE SOUTH AFRICAN SUGAR ASSOCIATION'S CONSTITUTION AND THE SUGAR INDUSTRY AGREEMENT**

This Gazette contains details of the proposed Sugar Masterplan that has been developed for the sector, as well as amendments to the Sugar Industry Agreement and the South African Sugar Association's Constitution and the designation of the Sugar Industry in terms of section 10 of the Competition Act.

#### **Part 1. Context and an industry vision**

In his State of the Nation Address, following the general election in 2019, President Cyril Ramaphosa committed to a 'reimagined industrial strategy' that will be one of the centre-pieces of rebuilding the economy.

To support the reimagined industrial strategy, the President announced that Government will develop a number of masterplans to help create conducive conditions for industries to grow. This will include assisting companies to improve their industrial capacities and sophistication, focusing more on export orientation, and reclaiming domestic market space lost to imports.

The sugar industry was identified as an important agriculture sector, supporting a large number of jobs, and contributing to the livelihoods of large numbers of South Africans in important regions of the country.

As announced in my budget vote speech in the National Assembly on 11 July 2019, the Department of Trade, Industry and Competition and the Department of Agriculture, Land Reform and Rural Development, have together with industry stakeholders, commenced engagement on the development of a Masterplan for the South African Sugarcane value-chain ('the Sugar Masterplan'). The process to produce the Sugar



Masterplan was co-chaired by the Minister of Agriculture, Land reform and Rural Development, Minister Thoko Didiza.

A proposed Sugar Masterplan has now been developed. It requires a set of collaborative actions by stakeholders in the industry, which in turns require an appropriate exemption from certain provisions of the Competition Act, given that collaboration between competitors is not ordinarily allowed in terms of the Act.

The Sugar Masterplan is the result of the process of extensive engagement and consultation amongst sugar industry stakeholders and social partners, particularly small and large cane growers, millers and refiners, retailers, industrial users of sugar and sugar-derived products, as well as workers and government.

The Masterplan seeks to create a diversified and globally competitive, sustainable and transformed sugarcane-based value chain that actively contributes to South Africa's economic and social development, creating prosperity for stakeholders in the sugarcane value chain, the wider bio-economy, society and the environment.

Phase 1 of the Sugarcane-based value chain Masterplan will run for three years and is focused on key actions with the following objectives:

- Stabilise the industry;
- Restructure industry capacity and costs in an orderly manner to ensure alignment to current and future market size, and establish the appropriate platform for a diversified sugarcane-based value chain by 2030 ('Vision 2030');
- Protect and retain sugarcane value-chain (including upstream and downstream) jobs as far as possible through the transition;
- Secure the foundational role of small-scale growers in the sugarcane value chain, and ensure a balanced approach to supporting small-scale grower sustainability towards Vision 2030;

- Mitigate the impact on workers and small-scale growers of capacity reductions; and
- Ensure that transformation of ownership and participation is significantly advanced through the restructuring and the transition to Vision 2030.

During Phase 1 of the Masterplan, which will run for three years, industrial users and retailers of sugar have committed to minimum levels of South African grown and produced sugar, equal to no less than 80% of need during Year 1, and increasing to 95% by Year 3. To support this undertaking, sugar producers have equally committed to price restraint during this period. Over the three-year Phase 1 period, the sugar industry will commence a stabilisation and restructuring plan which will include, inter alia, development of diversified revenue sources for the industry, small-scale grower retention, support and transformation.

Phase 1 will be implemented through seven (7) short-term action commitments aimed at stabilising and restructuring the industry.

To support re-balancing of industry capacity, and improve efficiency and restore profitability, and consider ways to maximise employment and transformation in the industry in line with the Masterplan, exemption of the sugar industry for a period of one year from certain sections of the Competition Act, 1998 (Act No. 89 of 1998), is required to enable the industry to develop the industry restructuring plan.

Within one year of exemption being granted, a detailed sugar industry restructuring plan must be developed and put into operation, that will include detailed plans to:

- Re-balance growing, milling and refining capacity in accordance with market requirements and the long-term requirements of the 2030 vision;
- Ensure that the future industry structure secures and protects the foundational role and participation of small-scale growers and independent mills in the value chain alongside large-scale growers, millers and refiners;

- Facilitate and advance implementation of industry transformation plans as set out in the Masterplan;
- Provide for such actions and/or funding instruments, as appropriate, to incentivise necessary capacity reductions and provide compensation and relief to those exiting the industry; and
- Ensure that the financial benefits of the restructuring plan are shared equitably and appropriately between consumers, users, refiners, millers and both small-scale and commercial growers.

## Part 2. Designation of the Sugar industry

The accompanying Notice to this Annexure sets out the decision by the Minister of Trade, Industry and Competition to designate the Sugar Industry under section 10(3)(b)(iv) of the Competition Act, which would enable the processing of an appropriate exemption by the competition authorities to enable implementation of the proposed Sugar Masterplan. It is the objective of the Masterplan to promote inter alia employment stability, transformation and sector growth and the designation is intended to enable these goals to be achieved.

The designation of the sugar industry in terms of the Competition Act is part of a two-step process, which will be followed by an exemption from the Competition Act by the Competition Commission. This exemption will allow for collaboration by sugar industry stakeholders as they work together towards the objectives of the Sugar Masterplan.

## Part 3. Amendments to the Sugar Industry Agreement and the South African Sugar Association's Constitution.

The dtic is the custodian of the Sugar Act (Act No 9 of 1978).

The dtic in consultation with the sugar industry, commenced with the process of reviewing and amending both the Sugar Industry Agreement and the South African Sugar Association's Constitution.



Delegates of the South African Sugar Association (SASA), comprising representatives from the South African Sugar Millers Association (SASMA), South African Cane Growers Association (SACGA) and the South African Farmers Development Association (SAFDA), have approved these amendments and transitional provisions. The parties reached an agreement on issues of (a) membership; (b) representation; and (c) disbursement of grower levies, resulting in SASA Council ratification of the changes to the SASA Constitution and the Sugar Industry Agreement provisions.

These changes represent a significant transformation moment in the institutional arrangements in the sector, with the black, small-scale farmer organisation, SAFDA, now fully incorporated in the South African Sugar Association.

The key amendments to the constitution and agreement are as follows:

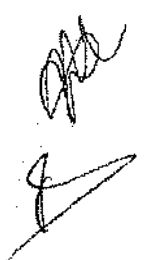
- a) **Transitional Period** - means the period of the new Agreement which shall be from 1 July 2020 until 31 March 2024 or any later date determined in terms of clause 15(5).
- b) **The affairs of the Association** shall be administered by a Council consisting of an independent Chairperson who meets the requirements set out in clause 15(9) (b) and 3 Vice-Chairpersons.
- c) **Membership:** The members of the Association shall be the South African Sugar Millers Association (SASMA), South African Cane Growers Association (SACGA) and South African Farmers Development Association (SAFDA).
- d) SACGA and SAFDA shall each comprise half of the Growers' Section and shall collectively comprise the Growers Section.
- e) **Representation:** 18 delegates shall represent each Section, provided that SACGA and SAFDA shall each be entitled to appoint 9 delegates to the Growers' Section.
- f) **Grower representation in SASA** will be shared equally by SAFDA and SACGA.
- g) **Growers Statutory Costs** means for the first year of the Transitional Period, the amount calculated by the sum of the costs of SACGA and SAFDA respectively approved by the Association's Council for the 2019/2020 season,

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escalated on 1 April 2020 by a rate equal to the year-on-year change in the headline consumer price index.

- h) **Voting** - All questions arising at general and special meetings of SASA shall be determined by a majority representing at least two-thirds of the delegates present at the meeting, provided that such majority includes at least 1 vote from the Millers Section and the Growers Section. Furthermore, 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

Full details of the changes are contained in the Annexures.



ANNEXURE A

CONSTITUTION OF THE SOUTH AFRICAN SUGAR ASSOCIATION

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

— Words underlined with a solid line indicate insertions in existing enactments.

1. The Constitution of the South African Sugar Association (SASA) is hereby amended –

(a) by the substitution for clause 2 of the following clause:

**"2 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 (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(2)** SACGA and SAFDA shall each comprise half of the Growers' Section and shall collectively comprise the Growers' Section.

**2(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."

(b) by the substitution in clause 6 for sub-clause 4 of the following sub-clause:

"(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) Act, 1984,] Financial Institutions (Protection of Funds) Act, 28 of 2001 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."

- (c) by the addition of the following clause after clause 14:

**"15. Transitional Provisions**

(1) Despite any other provision of this Constitution, during the Transitional Period contemplated in clause 15(1)(a), the following words and phrases have the meanings attributed to them in this clause 15 and cognate expressions have similar meanings:

(a) Transitional Period means from 1 July 2020 until 31 March 2024 or any later date determined in terms of clause 15(5);

(b) Transitional Provisions means this clause 15 and clauses 198 to 207 of the Sugar Industry Agreement, 2000;

(c) 2018 Transitional Provisions means the amendments to the Constitution and the Sugar Industry Agreement, 2000 promulgated in Government Gazette 41967 on 9 October 2018.

(2) In applying the Transitional Provisions, the Transitional Provisions in the Constitution must be read together with the Transitional Provisions in the Sugar Industry Agreement, 2000, both as amended and applied during the Transitional Period. In applying the Transitional Provisions of this Constitution, the Transitional Provisions of this Constitution shall prevail over any of the other provisions of the Constitution which conflict with or differ from those Transitional Provisions.

(3) The Transitional Provisions apply during the Transitional Period.

(4) After consultation with the Association, the Minister may amend the Transitional Provisions, by publishing notice of the amendments in the Government Gazette.

(5) After consultation with the Association, the Minister may extend the Transitional Period whenever necessary by publishing notice of each extension in the Government Gazette by the date on which the Transitional Period is due to expire.

(6) For the Transitional Period and with effect from 1 July 2020, the Constitution is deemed to have been amended by the Transitional Provisions.



- (7) The publication of the Constitution as amended in terms of section 2(2) of the Act is conclusive proof of the consent of the Minister thereto.
- (8) The provisions of this clause 15(8) apply in relation to the 2018 Transitional Provisions:
- (a) Anything done from 1 April 2018 until 9 October 2018 in terms of section 2(2) of the principal Act, both dates included, and which is done 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 2018 Transitional Provisions 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 in law.
- (b) 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 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 2018 Transitional Provisions; 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.
- (9) The Transitional Provisions apply only during the Transitional Period as follows:

### Administration

- (a) The affairs of the Association shall be administered by a Council consisting of an independent Chairperson who meets the requirements set out in clause 15(9)(b) and 3 Vice-Chairpersons and all references in the Constitution to the Chairman shall be replaced with Chairperson and the Vice-Chairman shall be replaced with reference to 3 Vice-Chairpersons;
- (b) 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;
- (c) The independent Chairperson shall receive fees as may be from time to time determined by the Association;
- (d) Any person or persons nominated by a majority decision of the Association's Council made in accordance with clause 15(9)(v) 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;
- (e) Subject to clause 15(9)(m), there shall be a Chairperson and 3 Vice-Chairpersons elected annually at a 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;
- (f) The Association's Council shall comprise 20 Councillors appointed at a 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;
- (g) The delegates of the Millers' Section may nominate a total of 4 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;
- (h) In addition to the requirements of clause 3(1), 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;
- (i) Except for the Council's Local Pest, Disease and Variety Control Committees, and where otherwise agreed by Council, the Council's committees 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. The Millers' Section may appoint 4 alternates to its committee members and SACGA and SAFDA may each appoint 2 alternates to their respective committee members;