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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.

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 Association at the special meeting on 16 April 2018 and the 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 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;

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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