

**THE CANE GROWERS' ACT**  
**(Act No.12 of 1967)**

**INCORPORATING**

**THE CONSTITUTION**

**Of**

**THE SWAZILAND CANE GROWERS' ASSOCIATION**

**(Revised to 25<sup>th</sup> April, 2003)**

The following amendments to the Act and the Schedule thereto have been incorporated:

1. Act (legal Notice No. 38 (6) of 1967)
2. Act No.2 of 1982 (Legal Notice No. 150 of 1982)
3. SCHEDULE (Legal Notice No.50 of 1967)
4. SCHEDULE (Legal Notice No.52 of 1967)
5. SCHEDULE (Legal Notice No.50 of 1969, as amended)
6. SCHEDULE (Legal Notice No. 20 of 1980)
7. SCHEDULE (gazette No. 229 of 1997)
8. SCHEDULE (Legal Notice No. 13 of 2003)

**THE SWAZILAND CANE GROWERS' ASSOCIATION LAW, 1967**

**(Law No.12 of 1967)**

**I ASSENT**

**In Her Majesty's Name**

**and**

**On Her Majesty's Behalf**

**Public Seal**

**F.A. LOYD**

**Her Majesty's Commissioner**

**13<sup>th</sup> April 1967**

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**THE CANE GROWERS' ACT**

*Arrangement of Sections*

*Sections –*

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## THE CANE GROWERS' ACT

Date of commencement: 21<sup>st</sup> April, 1967

An Act to incorporate the Swaziland Cane Growers' Association and to empower the Minister to impose a levy on Growers of sugar cane for the purposes of the Association.

### *Short title.*

1. This Act may be cited as Cane Growers' Act, No. 12 of 1967

### Interpretation

2. In this Act, unless the context otherwise requires-

“association” means the Swaziland Cane Growers Association incorporated by section 3;

“constitution” means the constitution of the association (referred to in section 3(1) as from time to time amended in accordance with the provisions of that constitution and of this Act;

“auditor” means an auditor whose qualifications are recognised by the law of any country as entitling him to practice in that country, as an auditor.

“financial year” means a period of twelve calendar months ending on the day referred to in clause 56 of the constitution;

“grower” means person who is a holder in his own name of a permit or quota allocated or assigned to him in accordance with the Sugar Act, No. 4 of 1967, but does not include a miller-cum-planter;

“levy” means a levy imposed under section 4;

“miller” means a person who operates a sugar mill in Swaziland for the production of centrifugal sugar under a licence issued in accordance with the Sugar Act, No. 4 of 1967;

“miller-cum-planter” has the meaning assigned to it by the Sugar Act, No.4 of 1967;

“Minister” means the Minister for Agriculture.

### *Incorporation of the Association. (Schedule)*

3. (1) An association, known as the Swaziland Cane Growers' Association, the constitution of which is set out in Part 1 of the Schedule, is hereby established as a body corporate with effect from the ninth day of October, 1963, with perpetual succession and the capacity of suing and being sued in its corporate name and of performing all such acts as are prescribed from time to time in its constitution and as are necessary for, and incidental to the carrying out of its functions under this Act.

- (2) Any alteration or amendment to the constitution shall be notified to the Minister by the association within one month of such alteration or amendment being passed at an extraordinary meeting of the association, and shall be published by means of a notice in the Gazette amending the Schedule, and no such alteration or amendment of any of the clauses of the constitution shall be of any force or effect until so published.

### ***Levy on growers***

4. (1) The Minister may, on the recommendation of the association, impose on all growers an annual levy, the amount of such levy being expressed as a rate per ton of sucrose supplied to, and accepted by a miller; and such levy may be imposed with retrospective effect from the beginning of the financial year to which it relates.

(2) The association shall determine the amount and the due date and method of payment of the levy which it may recommend in accordance with sub-section (1)

(3) If he decides to impose a levy in respect of a particular financial year, the Minister shall cause the amount and the due date and method of payment of the levy imposed in accordance with sub-section (1) to be published in the Gazette.

### ***Payment of the levy and interest***

5. (1) The levy shall, by the due date, be paid to the association in accordance with the method of payment notified under section 4.

(2) Interest at the rate of eight per centum per annum shall be paid on a levy not paid by due date.

Provided that where a levy has been imposed with retrospective effect, the interest on such levy shall become due and payable from a date specified in the notice published under section 4(3) and such due date shall be a date after the date of publication of the notice in the Gazette.

(3) Notwithstanding sub-section (1) the association may, where it considers that the circumstances so warrant, direct a miller to collect for the association, the amount of the levy and interest if any, due from a grower to the association.

(4) When so directed, the miller shall deduct the amount due to the association from the proceeds of any sale to him of sugar cane of the grower.

### ***Review of assessment***

6. Any person aggrieved by the association's assessment of a liability to pay a levy imposed in terms of section 4 may, within the time prescribed by regulations made under section 9, request the Minister to review such assessment and the determination made by the Minister on such review shall be final.

### ***Use of the levy***

7. The association shall use the amounts collected in terms of the levy for the following purposes-

- (a) to meet the costs of the association (including the salaries and wages of its employees) incurred in promoting the interests of growers, whether incurred before or after the commencement of this Act;
- (b) such other purposes as are consistent with the objects of the association.

***Audit of accounts of the association***

8. (1) Notwithstanding anything to the contrary, the association shall appoint an auditor annually to audit the accounts of the association.

(2) As soon as possible after such audit, the association shall deliver a copy of the accounts and the report of the auditor to the Minister.

***Regulations***

9. After consultation with the association, the Minister may, by notice published in the Gazette, make regulations to implement the objects of this Act.

## **SCHEDULE**

### **(Section 3)**

#### **Constitution of the Association**

#### **THE SWAZILAND CANE GROWERS' ASSOCIATION**

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#### **CONSTITUTION**

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##### ***Name***

1. The name of the Association shall be **THE SWAZILAND CANE GROWERS' ASSOCIATION**.

##### ***Office***

2. The Association shall have an office and administrative headquarters situated in Swaziland, which shall be its registered office in the event of the Association becoming a corporate body and/or being required to have a registered office under any law.

##### ***Legal Nature of the Association***

3. The Association shall be a voluntary *non-governmental and not for profit organisation* established for objects and with the powers hereinafter set forth. It shall be capable of performing any legal act and of suing and being sued in any court of law in its own name, and may be represented in any contract, act or proceeding (including any legal proceeding) by its Executive Committee or by any person duly authorised thereto by its Executive Committee.

4. Any legal process may be served upon the Association by delivery thereof to its Chairman or Secretary or at its office to the person in charge thereof.

5. The Association may, at any time, seek and obtain corporate status as a juristic person separate and distinct from its members by registration under the Swaziland Companies Proclamation or any other appropriate law.

6. The liability of the members of the Association for the indebtedness of the Association shall be limited to the amount of any unpaid levies or other debts due by them to the Association.

##### ***Membership***

7. Every person who is the holder in his own name of a permit or quota authorising or permitting him to grow sugar cane in Swaziland shall be entitled to membership of the Association: provided however that, notwithstanding the afore-going, no person shall be entitled to membership without the consent and approval of the Executive Committee:

(a) if he is a member of any other association of sugar cane growers in Swaziland;

- (b) if he is also a sugar miller in Swaziland;
- (c) if he is a person in whom any sugar miller in Swaziland is directly or indirectly interested;
- (d) if he is a person in whom any person directly or indirectly interested in a sugar milling operation in Swaziland is directly or indirectly interested, or
- (e) if he is directly or indirectly interested in, or controlled by or under common control with any person who is directly or indirectly interested in a sugar milling operation in Swaziland.

8. Any person desiring membership of the association shall make application to the Executive Committee in such manner, and shall disclose such particulars relevant to his application, as the Executive Committee may require, and the Executive Committee shall grant or refuse such application as the terms of clause 7 may require, and may in its discretion grant or withhold its consent or approval in cases where the same is required by clause 7.

9. On joining the Association every member shall pay an entrance fee of such amount as the Association in General Meeting shall from time to time determine. Until otherwise determined the entrance fee shall be the sum of E1:00 (one Lilangeni).

10. A member may resign from membership by delivering three month's written notice of such resignation to the Association.

11. The Executive Committee may suspend or expel any member from membership if, in the opinion of the Executive Committee, such member has been guilty of conduct unworthy of a member or injurious to the Association or its members, and for such purpose the Executive Committee may hold an inquiry into the conduct of any member, advising such member with such particularity as the Executive Committee may decide, of any complaint against him and the time and place of such inquiry and giving him an opportunity of appearing personally thereat and making such representations relevant thereto as he may wish.

12. Any member of the Association who, notwithstanding demand, fails to pay any amount which may be due by him to the Association, whether by way of levy, entrance fee or otherwise, may at the discretion of the Executive Committee be suspended or expelled from membership until such time as all amounts due by him to the Association have been paid.

13. Any member of the Association who ceases to be the holder in his own name of a permit or quota authorising or permitting him to grow sugar cane in Swaziland shall automatically be disqualified from membership and cease to be a member of the Association.

14. Any member of the Association who, after becoming a member, becomes a person to whom sub-clause (a), (b), (c), (d) or (e) of clause 7 applies, shall automatically be disqualified from membership until such time as the Executive Committee may specifically consent to his again becoming a member and decide to reinstate him as such. Upon such reinstatement no further entrance fee shall be payable by such member.

15. No member who resigns from membership or who is suspended or expelled from membership or who becomes disqualified from membership shall be released thereby from liability to pay to the Association any amount for which he became liable, whether in respect

of levy, entrance fee or otherwise, prior to such resignation, suspension, expulsion or disqualification.

***Objects of the Association***

16. The objects for which the Association is established are:-

- (a) To promote and foster the mutual interests of the members of the Association as growers of sugar cane in Swaziland.
- (b) To promote and foster the progress and interests of the Swaziland Sugar Industry, whether in its agricultural, manufacturing, refining, by-products producing, marketing or any other aspects or as a whole.
- (c) To represent and act for the growers of sugar cane in Swaziland generally, and the members of the Association in particular, in placing their interests, views, intentions, requirements, needs or desire before the Swaziland Government, the Swaziland Sugar Advisory Board, any Quota Board relating to the sugar industry, the Swaziland Sugar Association or any public or other body, association or person, and in obtaining any rights, privileges or relief for all or any of the growers of sugar cane in Swaziland or all or any of the members of the Association.
- (d) To act as the “Growers’ Association” referred to as such in the Constitution of the Swaziland Sugar Association, to exercise the rights and to discharge the duties and functions given to the said Growers’ Association in terms of the said Constitution and generally to represent and act for all growers of sugar cane in Swaziland in any matter relating to the Swaziland Sugar Association.
- (e) To act as the Cane Growers’ Association recognised by or referred to in any Industry Agreement, Scheme or Arrangement for the regulation of the sugar industry in Swaziland or any aspect of such industry (whether such Agreement, Scheme or Arrangement be brought into force by statute or otherwise), to exercise the rights and discharge the duties and functions which may be given to such Cane Growers’ Association under such Agreement, Scheme or Arrangement and generally to represent and act for all growers of sugar cane in Swaziland in any matter relating to such Agreement, Scheme or Arrangement.
- (f) To fulfil any functions that may be assigned to the Association by the Swaziland Government or any body or person acting under its authority.
- (g) To represent, act for and negotiate on behalf of all growers of sugar cane in Swaziland in any dealings with any sugar miller or group or association of sugar millers in any matter affecting the interests of such growers or any of them, and particularly in determining the division between miller and growers of the proceeds of sale of sugar manufactured from cane supplied by growers and/or the proceeds of any by-product or waste product of such manufacture.
- (h) To promote and foster the production of sugar cane.
- (i) To collect and circulate statistics and other information relating to the production of sugar cane, the manufacture of sugar from sugar cane, the by-

products and waste products of such manufacture, the marketing and realisation of sugar and such by-products and waste products and any other matter of interest to the sugar industry.

- (j) To encourage and assist in the improvement of the technical knowledge of persons engaged in the growing of sugar cane.
- (k) To do all such other things as may be necessary for or incidental to any of the aforesaid objects, or which the Association considers may be conveniently combined therewith or conducive to the attainment thereof.

Each of the objects set out in the sub-clauses set out above shall be regarded as independent objects and shall not be altered or restricted or influenced in their interpretation by reference or inference from any other object or the name of the Association.

17. The Association shall have all such powers as may be necessary for or incidental or conducive to the furtherance or achievement of all or any of its objects, and, without derogating from the generality of the foregoing, shall have specific power-

- (a) To raise funds for the purposes of the Association by means of entrance fees, levies, donations or otherwise, and to collect from the members of the Association such moneys as may from time to time be payable to the Association by them in terms of this Constitution, whether by way of entrance fee, levy or otherwise, and in particular (without derogating from its right to collect such moneys by direct payment or in any other manner) to make arrangements for the collections of such moneys by way of payments thereof to the Association by the Swaziland Sugar Association or any miller out of any moneys from time to time becoming due to members by the Swaziland Sugar Association or such miller, whether in respect of such member's share of the proceeds of sale of sugar or otherwise; and each member, by accepting membership of the Association, agrees that the Swaziland Sugar Association or any miller may make payment to the Association as aforesaid of any moneys from time to time becoming due to the Association by such member.
- (b) To acquire by purchase, hire, exchange or otherwise immovable and movable property of all kinds, and if deemed fit to appoint a Trustee to hold the same for and on behalf of the Association, and to improve, sell, let, exchange or otherwise dispose of or grant rights over such property.
- (c) To borrow and raise money and to secure or discharge any debt or obligation of or binding on the Association in such manner as may be thought fit and in particular by mortgages, pledges or charges upon any or all of the immovable or movable property and/or assets (present and future) of the Association and by the creation and issue on such terms as may be thought expedient of debentures or other securities of any description; and to receive monies upon deposit or otherwise upon such terms and conditions as may be deemed expedient.
- (d) To lend money or grant credit facilities, with or without interest and with or without security, to such persons as the Association may deem fit, and in particular to members and employees of the Association and persons having

dealing with the Association, and otherwise to assist or subsidise such members, employees and persons.

- (e) To guarantee, whether as surety or as surety and co-principal debtor or otherwise, or become liable for the payment of money or the performance of any obligation by any person, and generally to transact all kinds of guarantee business and to give any kind of indemnity.
- (f) To open and operate banking accounts or accounts with any building society or other deposit-receiving institution, to draw, make, accept, endorse, discount, negotiate, execute and issue and to buy, sell and deal in bills of exchange, promissory notes and other negotiable or transferable instruments.
- (g) To invest the surplus funds of the Association in such manner as may be deemed expedient until such time as the same may be required for the purposes of the Association.
- (h) To remunerate or reward any person for research or other work leading to the advancement of the objects of the Association and to employ and pay such officials, servants and agents as may be deemed expedient and to remunerate any person rendering service to the Association.
- (i) To nominate representatives for appointment, or to appoint representatives on or to any council, committee, board, association or body controlling, regulating, advising on or dealing with any aspect of the sugar industry in Swaziland. Such representatives need not be members of the Association.
- (j) To institute, conduct, defend, compromise or abandon any legal proceedings by or against the Association.
- (k) To submit to arbitration any claims made by or on behalf of the Association or any matter in which the Association may be acting or concerned.
- (l) To establish or to contribute to organisations or schemes for research and scientific investigation into the more efficient production of sugar cane, whether in Swaziland or elsewhere.
- (m) To institute or conduct any investigations, technical or otherwise, which may be of interest to growers of sugar cane in Swaziland or in the interests of the Swaziland sugar industry or any portion thereof.
- (n) To affiliate with or join other Associations or persons serving the interests of growers of sugar cane in the Republic of South Africa or elsewhere.
- (o) To incur such expenditure as may be deemed expedient for the exercise of any of the aforesaid powers or the furtherance of any of the objects of the Association.

#### ***General Meetings of the Association***

18. (1) General Meetings of the Association shall consist of Annual General Meetings and Extraordinary General Meetings.

- (2) At an Annual General Meeting the Association shall have power to transact any business which may be done in terms of Clause 20.
- (3) At an Extraordinary General Meeting the Association shall have power to consider and deal with any motion or proposal in terms of Clause 61 for the dissolution of the Association or any motion or proposal in terms of Clause 63 for the alteration of this Constitution.
- (4) In General Meeting the Association shall also have power to express its views on any matter which the Executive Committee may refer to it, or which it may wish to refer to the executive Committee, but (save as is provided in sub-clause (3) above shall have no power to bind the Executive Committee by its views nor to exercise any functions reserved to the Executive Committee in terms of Clause 41.

### ***Annual General Meetings***

19. An Annual General Meeting shall be held in respect of every financial year of the Association not later than the last day of *September* following the end of such financial year; provided that the Executive Committee may in special circumstances and for good cause authorise the holding of an Annual General Meeting at a later date. Subject as aforesaid, the time, date and place for the holding of each Annual General Meeting shall be fixed by the Executive Committee.

20. The business of every Annual General Meeting shall be to receive and consider a Report by the Executive Committee on the working of the Association during the financial year to which the meeting relates, together with the audited balance sheet, revenue and expenditure account and any other final accounts of the Association for such financial year, to fix the remuneration of the Association's auditors for such financial year, to appoint auditors for the ensuing financial year, to consider the Executive Committee's estimates of expenditure for the ensuing year, to fix that amount of any levy to be made on members for the purpose of providing funds to meet the Association's past expenditure and/or future requirements, to fix the amount of any remuneration to be paid to the Chairman of the Association and/or the members of the Executive Committee for the past or the ensuing year and to do any other business within the powers of Association in General Meeting of which special notice (setting out the terms of any resolution to be proposed) has been given in the notice convening the meeting or which it may be proper to transact at an Annual General Meeting.

### ***Extraordinary General Meetings***

21. All General Meetings of the Association, other than Annual General Meetings, shall be called Extraordinary General Meetings.

22. The Executive Committee may convene an Extraordinary General Meeting whenever and for any purpose it may deem fit, and shall do so whenever thereto requested in writing signed by any six members to the Association.

Such writing shall specify the business to be transacted at the meeting requested.

23. Particulars of all business to be transacted at an Extraordinary General Meeting (including the terms of any resolution to be proposed) shall be given in the notice convening the meeting and no business shall be transacted at such meeting except the business so

notified and any other business which, in the opinion of the chairman of the meeting, bears directly thereon.

***Attendance at General Meetings, Notice of General Meetings, and Notices Generally.***

24. Every member of the Association shall be entitled to attend every General Meeting of the Association and (save as is otherwise provided in clauses 61 and 63) to receive not less than fourteen days' notice in writing of every Extraordinary General Meeting. Such notice shall specify the place, day and time, business to be conducted at the meeting and shall be given by sending it through the post in a prepaid envelope addressed to the member at an address in Swaziland which he shall furnish to the Association for such purpose. Any member who does not furnish the Association with such an address shall not be entitled to receive notices of meetings or any other notice. A notice given by post shall be deemed to have been received by the member to whom it is addressed three days after it is posted.

25. Notices other than notices of General Meetings may be given either in the manner aforesaid or by publishing the same in a daily newspaper published and circulating in Swaziland and notices so published shall be deemed to have been served on members on the date of first publication thereof.

26. The full period or any part of the period of notice required for a General Meeting may be waived by members present in person or by proxy holding not less than ninety per centum of the total voting strength of each separate Group on a ballot of all members of the Mhlume Planters Group, the Big Bend Planters Group and the Simunye Planters Group, counting the votes of the members of each Group separately.

***Proceedings at General Meetings***

27. The Chairman of the Association shall be entitled to preside at all General Meetings of the Association. If however the Chairman shall be unable or unwilling to preside at any meeting, or shall not be present thereat within ten minutes of the notified time thereof, the members present may elect one of their number to preside at such meeting.

28. No business shall be transacted at any General Meeting unless a quorum is present. A quorum shall be members from the Mhlume Planters Group, the Big Bend Planters Group and the Simunye Planters Group present in person or by proxy and together entitled to exercise not less than fifty-one per centum of the total voting strength on a ballot of all the members from the said Groups, counting the votes of members of each Group separately: provided however that, if after the elapse of half an hour from the time appointed for any meeting a quorum is not present the meeting shall stand adjourned to such date, not less than seven and not more than fourteen days later, and such time as the Executive Committee, or failing it, the Chairman shall fix, and if at such adjourned meeting a quorum is not present within half an hour from the appointed time thereof the members present in person or by proxy shall be a quorum. The Executive Committee shall notify all members of any such adjournment and of the reason therefore and of the place, date and time fixed for holding of the adjourning meeting.

29. The Chairman of any General Meeting may, if so directed by the meeting, adjourn the same from time to time and place, but no business shall be transacted at any adjourned meeting other than the business left un-finished at the meeting which was adjourned. The Executive Committee shall whenever time permits notify all members of any such

adjournment and of the reason therefore and of the place, date and time fixed for the holding of the adjourned meeting.

**Representation and Voting at General Meetings**

30. Every member to be entitled to appoint another member as a proxy to attend for him at any General Meeting and to speak and vote, both on a show of hands and on a ballot, in his behalf. The appointment of a proxy, in order to be valid, shall be made by a written instrument as nearly as possible in the following form or in any other common form acceptable to the Executive Committee, signed by the member appointing the proxy and delivered to the Association at its office not less than twenty-four hours before the meeting at which it is to be used.

**Form of Proxy**

I/We, .....of.....  
.....being a member/members in  
good standing of the Swaziland Cane Growers' Association, hereby appoint.....  
.....or failing him.....  
.....also members of the said Association, as  
my/our proxy to attend, speak and vote for me/us at the (Annual or Extraordinary, as the case  
may be) General Meeting of the said Association to be held on .....  
.....day of.....20.....

This proxy is to be used in favour of/against the resolution for.....  
.....

Unless otherwise instructed, the proxy shall be entitled to vote or abstain from voting as he thinks fit.

Dated at .....this.....day of.....

.....  
(Signature of Member)

31. Subject as provided in clauses 61 and 63, no motion or proposal considered at any General Meeting shall be passed or carried unless it is passed by separate majorities of the votes of the members from Mhlume Planters Group, the Big Bend Planters Group and the Simunye Planters Group respectively, present in person or by proxy. Accordingly a motion-

or proposal put to the vote at any General Meeting shall be decided by the separate counting of the votes, for and against the proposal, of members from the Mhlume Planters Group, the Big Bend Planters' Group and the Simunye Planters Group respectively. Unless any member or his proxy shall demand a ballot, voting shall be separate show of hands and a declaration by the Chairman that a motion has been carried unanimously, or by particular majorities of the members from each Group, or lost, followed by an entry to that effect in the Minutes of the Meeting, shall be conclusive evidence of such fact without proof of the numbers or proportions of the votes recorded by members from each Group in favour of or against the motion or proposal.

32. If a ballot is demanded it shall be taken in such manner as the chairman of the meeting, with the concurrence of the Executive Committee may direct. Two scrutineers shall be selected by the Chairman to declare the result of the ballot and their decision shall be given by the chairman of the meeting. The result of the ballot shall be deemed to be the resolution of the meeting on the question on which the ballot was demanded.

33. The demand for a ballot shall not prevent the continuation of the meeting for transaction of any business other than the question upon which the ballot has been demanded.

34. On a show of hands every member present in person or by proxy shall have one vote. On a ballot every member present in person or by proxy shall have one vote for every ton of sucrose or portion thereof which he is permitted to produce during the current season in terms of any permit or quota for the growing of sugar cane and the production of sucrose held by him.

35. In the case of an equality of votes, whether on a show of hands or on a ballot, the chairman of the meeting shall not be entitled to a casting vote and the motion voted upon shall be declared lost.

36. Notwithstanding the provisions of clause 34, no member shall be entitled to vote at any General Meeting if payment of any amount due and payable by him to the Association by way of entrance fee, levy or otherwise has been duly demanded and remains unpaid.

### *Executive Committee*

37. The Association shall have an Executive Committee consisting of members of the Association, of whom four shall be appointed by the Mhlume Planters Group, four by the Big Bend Planters Group and **four by the Simunye Planters Group. In addition three members shall be appointed by Tibiyo Taka Ngwane, one for each Planters' Group.** Appointments to the Executive Committee shall be notified to the Executive Director of the Association in writing by the appointing authority, which shall have the right at any time in like manner to remove from office any member of the Executive Committee appointed by it and to appoint any other member instead. Members of the Executive Committee, once appointed shall remain in office until they are removed, or until they resign or cease to be members of the Association.

38. Any vacancy caused through any member of the Executive Committee resigning or otherwise ceasing to hold office shall be filled by the appointment of a new member in manner aforesaid by the authority which appointed the member who has ceased to hold office.

39. The Executive Committee shall have power to co-opt persons (who need to be members of the Association) as additional members of the Executive Committee to assist it in advisory capacity, but such co-opted members shall have no power to vote on any question for decision by the Executive Committee.

#### ***General Alternates to the Executive Committee***

40. Each appointing authority shall appoint a member of the Association as a general alternate to act for in the place of any one of the members of the executive Committee appointed by it in terms of clause 37 during his absence or inability to act as such member. An alternate so acting shall be entitled to exercise all the rights and discharge all the duties and functions of the member of the Executive Committee whom he represents.

#### ***Powers of the Executive Committee***

41. The business and affairs of the Association shall be managed and conducted by the Executive Committee, which shall have full power and authority to exercise all the powers of the Association (other than the power of fixing the amount of any levy to be made on members) and (without derogating from generality of the foregoing) shall particularly have power-

- (a) To formulate and control the financial policy of the Association, to frame estimates of expenditure and to make recommendations to the Association in General Meeting as to levies to be paid by members of the Association, both as members generally and as members of their own Planters Groups, for the purpose of providing funds for carrying on the affairs of the Association and the domestic affairs of Planters' Groups.
- (b) Subject to the provisions of clauses 50, 51, and 52, to appoint all delegates to General Meetings of the Swaziland Sugar Association and all members of its Council and its Marketing Executive Committee which the Association may be entitled to appoint, and to appoint representatives on or to any other authority, body, organisation or association discharging any function relating to the Swaziland Sugar Industry. Such delegates, members and representatives need not be members of the Association.
- (c) To negotiate the terms of any agreement or any statutory or other determination, scheme or arrangement relating to the supply to millers of sugar cane produced by members of the Association, the division between millers and growers of the proceeds of the sale of sugar and by-products and waste products manufactured or derived from sugar cane supplied to millers by members of the Association and any other matter concerning the relationship between growers of sugar cane and sugar millers in Swaziland or any other aspect of the sugar industry in Swaziland.

- (d) To arrange and direct the representation of the Association at any arbitration, enquiry or investigation relating to any aspect of the Swaziland sugar industry.
- (e) To make rules and regulations (not inconsistent with the provisions of this Constitution) for the conduct of General Meetings of the Association and of Planters' Groups, meetings of the Executive Committee and of Planters Group Committees, and generally for the procedure to be observed in the conduct of the affairs of the Association, the Executive Committee and Planters Group Committees.
- (f) To authorise the signature of any document and the performance of any legal act by or on behalf of the Association.
- (g) To appoint and pay administrative and executive officers, secretaries, accountants and other employees or agents of the Association.
- (h) To appoint sub-committees of its own members to consider any matter and make recommendations to the Executive Committee thereon or to deal with any matter and
- (i) to delegate any of its powers or functions to any such subcommittee appointed by it or to any member of the Executive Committee.

***Proceedings of the Executive Committee***

- 42. The executive Committee shall meet together as often as circumstances require, and meetings of the Executive Committee shall be convened whenever the Chairman of the Association so directs or any two members so request. The Chairman of the Association, or failing him, any members of the Executive Committee constituting a quorum thereof, shall fix the time and place for the holding of such meetings. Every member of the Executive Committee and every alternate to any such member shall be entitled to receive notice of every meeting of the Executive Committee. Such notice may be informal, need not be in writing, and need not state the business of the meeting. If, however, written notice is given it shall be sufficiently given to any member if delivered at or posted to the address in Swaziland given to the Association by such member as his/her address for receiving notices and any member of the Executive Committee who fails to furnish the Association with such an address shall not be entitled to receive such notice.
- 43. The Chairman of the Association shall be entitled to preside at all meetings of the Executive Committee. If however the Chairman shall be unable or unwilling to preside at any meeting, or shall not be present thereat within ten minutes of the notified time thereof, the members of the Executive Committee present may elect one of their number to preside at such meeting.
- 44. No business shall be transacted at any Executive Committee Meeting unless a quorum is present. A quorum shall be eight members of the Executive Committee (not being members co-opted in an advisory capacity) or their general alternates; comprising two members from each of Mhlume and Big Bend Planters' Groups, two members from

Simunye Planters' Group and two members from Tibiyo Taka Ngwane: provided however that if after the elapse of half an hour from the time appointed for any meeting a quorum is not present, within half an hour from an appointed time thereof, the members of the Executive Committee and their alternates present thereat shall be a quorum. The Chairman shall cause all members of the Executive Committee and their alternates to be notified in the manner referred to in clause 42 of any adjournment and of the reason thereof and of the place, date and time for the holding of the adjourned meeting. If written notice is given it shall be sufficiently given if delivered or posted to the address in Swaziland given to the Association by the member or alternate concerned as his address for receiving notices, and any member of the Executive Committee or any alternate who fails to furnish the Association with such an address shall not be entitled to receive such notification.

45. At meetings of the Executive Committee each member shall have one vote and no motion or proposal shall be passed or carried unless it is passed by a majority of the votes of the members present. In the case of any equality of the votes the Chairman shall not be entitled to a casting vote and the motion voted upon shall be declared lost.
46. A resolution in writing signed by all members of the Executive Committee or their alternates shall be as effective as a resolution duly passed at a meeting of the Executive Committee. Any such resolution may consist of several documents in like form signed by one or more members of the Executive Committee or their alternates.

#### ***Chairman and Vice-Chairman***

47. The Executive Committee shall every year at its first meeting after the Annual General Meeting of the Association appoint from its members a Chairman and Vice Chairman of the Association, who shall hold office until a new Chairman and Vice Chairman are appointed in like manner for the next succeeding year. As far as possible the Chairman and the Vice Chairman in any one year shall not be members of the Executive Committee appointed by the same Planters Group, but this principle may be varied in any year by resolution of the executive Committee. The Chairman of the Association shall be entitled to preside at all meetings of the Association and of the Executive Committee and to perform any administrative functions on behalf of the Association which the Executive Committee may delegate to him. He shall also be an ex-officio member of any sub-committee appointed by the Executive Committee and shall be entitled to preside at meetings thereof. The Vice chairman shall be entitled to act for the Chairman and to exercise all his rights and discharge his duties and functions in the Chairman's absence or inability to act personally, and all references to the Chairman of the Association in this Constitution shall be deemed to include the Vice-Chairman so acting.

#### ***Planters' Groups***

48. The Association shall be divided into three Planters' Groups namely the Mhlume Planters' Group, the Big Bend Planters' Group and the Simunye Planters' Group.

The Mhlume Planters' Group shall consist of those members of the Association who supply sugar cane to the sugar mill at Mhlume operated by the Royal Swaziland Sugar Corporation; the Big Bend Planters' Group shall consist of those members of the Association who supply sugar cane to the sugar mill at Big Bend operated by **Ubombo Sugar Limited** and the Simunye Planters' Group shall consist of those members of the Association who supply sugar to the sugar mill at Simunye operated by the Royal Swaziland Sugar Corporation Limited. **Notwithstanding the provision under section 2 of the Cane Growers' Act and also the membership exclusion by virtue of clause 7(c) of the Constitution of the Swaziland Cane Growers' Association,** Tibiyo Taka Ngwane shall qualify for membership of a Planters' Group in the same manner as any other grower, **and** shall be entitled to vote for the appointment or nomination of the Planters' Group representatives referred to in clause 49.

49. The Mhlume Planters' Group, the Big Bend Planters' Group and the Simunye Planters' Group shall each have power:
- (a) To deal with any matter which is domestic to its own Group: provided however that the said Groups shall not have power to pursue any policy or take any decision or do any act which is repugnant to or inconsistent with any policy, decision or act of the Association or its Executive Committee, nor shall the said Groups or their Members have power to deal with any matter affecting the price at which sugar cane is to be supplied by growers to any miller, or affecting the division between growers and millers of the proceeds of sale of sugar or by-products or waste products manufactured by a miller from cane supplied by growers or any matter generally affecting the relationship of growers of sugar cane to sugar millers or to Swaziland Government or any statutory or other body association or person;
  - (b) To appoint the members of the Executive Committee which their Planters' Group is entitled to appoint in terms of clause 37;
  - (c) To appoint the Growers' representatives on any Mill Group Committee constituted for the Mill or the Mill Group to which the members of their Planters Group are attached;
  - (d) To nominate the members of the Council of the Swaziland Sugar Association which the Association is entitled to appoint **provided at least two of the members are members appointed by Tibiyo Taka Ngwane**, and these nominations shall as far as possible include the same members as the members appointed to the Executive Committee in terms of sub-clause (b) of this clause;
  - (e) To elect a Planters' Group Committee consisting of **not more than eight of its members (of whom 4 shall form a quorum** for the conduct of business) with full power to manage its business and conduct its affairs; and

- (f) Without derogating from the generality of the foregoing, to collect from members of its own Planters' Group, by way of levy or otherwise, such funds as it may from time to time recommend to a General Meeting of its Planters' Group and such General Meeting may authorise for the purpose of meeting expenditure on matters and purposes domestic to its own Planters' Group, and to plan and effect such expenditure.

50. Nominations by a Planters' Group Committee in terms of sub-clause (d) above shall be made by letter written under the authority of the Planters' Group making the nomination and delivered to the Association at its office, and on receipt of any such letter the Executive Committee of the Association shall (save as is hereinafter otherwise provided) be obliged to cause the Association to exercise its rights of appointment in terms of the nominations so received.

51. Delegates to represent the Association at any General Meeting of the Swaziland Sugar Association shall be appointed by the Executive Committee which shall be obliged to appoint **twelve** members, comprising four members from each of the Mhlume and Big Bend Planters' Groups, and Simunye Planters Groups, **provided that one member from each Planters' Group shall be from Tibiyo Taka Ngwane** and these appointments in respect of Planters Groups shall as far as possible include the same members appointed to the Executive Committee in terms of Clause 49(b). Appointments may be made at any time and shall be deemed to continue in force until such time as they are changed by new appointments.

52. Nominations of persons to be appointed as members of the Council of the Swaziland Sugar Association shall be deemed to continue in force until such time as they are changed by new nominations. In the case of any nomination of a person for appointment as a member of the said Council at the time of the Annual General Meeting of the Swaziland Sugar Association, such nominations shall be delivered to the Association not less than fourteen days before the date appointed for such Annual General Meeting, failing which the Executive Committee shall not be obliged to give effect thereto at such Annual General Meeting. In the case of any nomination of a person for appointment as a member of the said Council at any other time, such nomination shall be delivered to the Association not less than fourteen days before the time when the Association has to make such appointment, failing which the Executive Committee shall not be obliged to give effect thereto at such time.

53. Save as herein otherwise provided, the provisions of this Constitution relating to General Meetings of the Association and to meetings of the Executive Committee shall apply *mutatis mutandis*, to general meetings of Planters' Group Committees respectively, save that a motion or proposal considered at a general meeting of a Planter's Group may be passed or carried by a simple majority of the votes of the members present in person or by proxy. Each Planter's Group shall elect its first Planters' Group Committee at an Extraordinary General Meeting of such Planters' Group to be convened by the Executive Committee of the Association as soon as practicable after the adoption of this Constitution. The Planters' Group Committee so elected shall hold office until the conclusion of the next Annual General Meeting of their Planters' Group. Thereafter each Planters' Group shall elect its Planters'

Group Committee at every Annual General Meeting of such Planters' Group, and the Planters' Group Committee so elected shall hold office until the conclusion of the next General Meeting of its Planters' Group. Casual vacancies occurring on any Planters' Group Committee may be filled by such Committee, or (if there are not sufficient members of such Committee remaining to form a quorum) by appointment at an Extraordinary General Meeting of the Planters' Group concerned, which shall be specially convened for such purpose either by the remaining members of such Committee or by the Executive Committee of the Association. Persons appointed to fill such casual vacancies shall hold office until the conclusion of the next Annual General Meeting of the Planters' Group concerned.

### ***Secretary***

54. The Executive Committee may appoint a Secretary to the Association at such remuneration and upon such other terms and conditions as it may deem fit. Any Secretary so appointed shall perform such duties and functions as may be assigned to him by the Executive Committee.

### ***Minutes***

55. Proper minutes shall be kept in customary form of all General Meetings of the Association and of all meetings of the executive Committee and any sub-committee thereof. All written resolutions passed by the Executive Committee in terms of clause 46 shall be pasted into or otherwise recorded in the book of the Minutes of meetings of the executive Committee.

### ***Financial Year***

56. The financial year of the Association shall end on the 31 March in each year.

### ***Books of Account and Auditors***

57. It shall be the responsibility of the Executive Committee to ensure that proper books of accounts are kept in custody form in respect of all transactions, property and funds of the Association. The said books of account shall be kept at such place as the Executive Committee may determine and shall be open for inspection by any member of the Executive Committee.

58. The said books and accounts shall be audited in respect of every financial year of the Association and audited final accounts in respect of every financial year shall be submitted by the Executive Committee to the Annual General Meeting of the Association held in respect of such financial year.

59. The auditor of the Association shall be appointed annually at its Annual General Meeting. No member of the Association or of the executive Committee shall be eligible for appointment as such auditor. The auditor shall have the right of access at all reasonable times to all books, vouchers and records of the Association and shall be entitled to require all such information and explanations as may be necessary for the performance of his duties.

***Limitation of Liability of Members of the Executive Committee, Members of Planters' Group Committees and Official, and Indemnity.***

60. No member of the Executive Committee or any Planters' Group Committee and no alternate for any such member shall be liable to the Association for any act, omission, neglect or default by any other such member or alternate, not for any loss occasioned by any negligence, error of judgement or oversight on his own part, nor for any other loss, damage or misfortune whatsoever which may happen in the execution of the duties of his office or in relation thereto, unless the same shall happen through his own dishonesty; and every such member and alternate shall be indemnified by the Association against, and it shall be the duty of the Executive Committee to pay out of the funds of the Association all costs, losses and expenses which any such member or alternate may incur or become liable for by reason of any act or omission by him in his capacity as such. Any liability of the Association under this clause may be met out of funds to be raised by the Association by way of levies imposed or to be imposed on its members.

***Dissolution of the Association***

61. The Association may be dissolved at any time by a resolution of the Association passed at an Extraordinary General Meeting of which not less than thirty day's notice has been given specifying the terms of such resolution; provided however that no such resolution shall be deemed to be passed or carried unless it is passed by the separate majorities of not less than three-quarters of the votes of the members of the Mhlume Planters' Group, the Big Bend Planters' Group and the Simunye Planters' group respectively, present in person or by proxy, voting as on a ballot.

***Disposal of Surplus Moneys and Assets***

62. Any surplus moneys and assets of the Association which may upon the dissolution thereof remain after payment of all indebtedness of the Association shall be given and transferred to any other association or body in Swaziland having objects similar to the objects of the Association and to which the members of the Association may, by resolution passed at or before the time of dissolution, have resolved that such surplus assets and moneys should be given. If no such resolution is passed, any such surplus moneys and the proceeds of any such surplus assets shall be divided between the members of the Association as nearly as possible in the same proportions as members have contributed to the funds of the Association.

***Alterations and Additions to this Constitution***

63. The provisions of this Constitution may be altered only by a resolution of the Association passed at an Extraordinary General Meeting of which not less than thirty days notice has been given specifying the terms of such resolution; provided however that no such resolution shall be deemed to be passed or carried unless it is passed by separate majorities of not less than three-quarters of the votes of the members of the Mhlume Planters' Group, the

Big Bend Planters Group and the Simunye Planters' Group respectively, present in person or by proxy, voting as on a ballot.

***Definitions***

64. In this Constitution, unless the context otherwise indicates-

“The Association” means the Swaziland Cane Growers' Association, the Constitution of which is herein set out,

“Executive Committee” means the Executive Committee of the Association appointed in terms of clause 37,

“Planters' Group” means a Planters Group established in terms of clause 48,

“Planters' Group Committee” means the Committee of a Planters' Group elected in terms of sub-clause (e) of clause 49.

“Season” means the crushing season of any mill to which a grower supplies sugar cane,

The singular includes the plural, and

All references to persons shall include references to companies and other bodies corporate, but not to any organisation or association which is not recognised in law as a juristic person separate and distinct from its members.